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# Annual Report on the Status of the State of Maine Workers' Compensation System, 2009

Maine Workers' Compensation Board

Maine Bureau of Labor Standards

Maine Bureau of Insurance

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# **Annual Report on the Status of the Maine Workers' Compensation System**

**Submitted to the  
124th Legislature  
(First Regular Session)**

**February 2009**

William A. Peabody  
Director  
Bureau of Labor Standards  
Department of Labor

Paul R. Dionne  
Executive Director  
Workers' Compensation Board

Mila Kofman  
Superintendent  
Bureau of Insurance  
Department of Professional and  
Financial Regulation



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STATE OF MAINE  
**WORKERS' COMPENSATION BOARD**  
27 STATE HOUSE STATION  
AUGUSTA, MAINE 04333-0027

JOHN ELIAS BALDACCI  
GOVERNOR

PAUL R. DIONNE  
EXECUTIVE DIRECTOR/CHAIR

February 15, 2009

The Honorable John Elias Baldacci  
Governor of the State of Maine  
1 State House Station  
Augusta ME 04333-0001

The Honorable Elizabeth H. Mitchell  
President of the Senate  
3 State House Station  
Augusta ME 04333-0003

The Honorable Hannah M. Pingree  
Speaker of the House  
2 State House Station  
Augusta, Maine 04333-0002

Senator Troy Dale Jackson, Chair  
Representative John L. Tuttle, Jr., Chair  
Joint Standing Committee on Labor  
100 State House Station  
Augusta ME 04333-0100

Senator Peter B. Bowman, Chair  
Representative Sharon Anglin Treat, Chair  
Joint Standing Committee on  
Insurance & Financial Services  
100 State House Station  
Augusta ME 04333-0100

We are pleased to submit to the Governor and the 124<sup>th</sup> Legislature, First Regular Session, the Annual Report on the Status of the Maine Workers' Compensation System as required by Title 39-A § 358-A(1).

The Annual Report profiles the current status of the workers' compensation system in Maine and is submitted by the three State agencies most involved in the workers' compensation system – the Workers' Compensation Board, the Bureau of Insurance, and the Maine Department of Labor, Bureau of Labor Standards.

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## **EXECUTIVE SUMMARY**

The Workers' Compensation Board, in consultation with the Superintendent of Insurance and the Director of the Bureau of Labor Standards, is directed by Title 39-A, Section 358-A(1) to submit an annual report on the status of the workers' compensation system to the Governor and the Joint Standing Committee on Labor and Joint Standing Committee on Banking and Insurance by February 15 of each year.

## **WORKERS' COMPENSATION BOARD**

The Governor worked diligently with both labor and management to ensure the passage of Public Law 2004 Chapter 608 which became effective April 8, 2004. The intent of the legislation was to break the Board's gridlock on key issues and return a sense of normalcy to the Board's operations. The legislation changed the structure of the Board from eight members to seven. Three members represent labor and three represent management. The seventh member is the Executive Director, who serves as Chair of the Board and at the pleasure of the Governor. Since the effective date of the legislation, the Board has resolved all of the gridlock issues and functions in an effective manner in setting policy for Board business. Some of the difficult issues the Board has acted on include: hearing officer appointments; hearing officer terms; budgetary and assessment matters; Section 213 actuarial studies; electronic filing mandates; by-law revisions; legislation; compliance issues; independent medical examiners; worker advocate resources and reclassifications; dispute resolution issues; increase in compliance benchmarks; independent contractors; an independent audit by Blake, Hurley, McCallum, and Conley; and a Facility Fee Schedule.

The importance of the Governor's legislation (Chapter 608) cannot be overly emphasized. The State of Maine has gradually improved its national rating regarding the costs of workers' compensation and an effective and efficient Board will help to perpetuate this positive trend. But recently the Board has been divided on issues such as the budget, independent medical examiners, and Section 213 issues (data collection and permanent impairment thresholds). These are issues of particular importance to both Labor and Management, but issues on which they have been unable to reach consensus. Decisions are regularly made by the Chair in a tie-breaking manner, which means, in large part, that the parties of interest are not reaching consensus on decisions that impact their constituencies.

It was not too long ago that Maine was one of the costliest states in the nation in regard to workers' compensation costs. A recent article in the *Workers' Compensation Policy Review* compared the costs of benefits for 47 states and highlighted Maine's achievements during the past few years: "The experience in Maine ... clearly demonstrates that significant reduction in cash, medical, and total benefits are possible."

The 2008 Edition of *Workers' Compensation State Rankings Manufacturing Industry Costs* provides a costs comparison for the manufacturing section in 45 states. The purpose of the study is to provide a comparison as to the cost of obtaining workers' compensation coverage among states. Maine's rank was 30<sup>th</sup> among 45 states and Maine's rank was 3<sup>rd</sup> among the New England states with only Massachusetts and Rhode Island faring better than Maine. The Oregon Department of Consumer and Business Services reports every two years as to overall premium costs per State. In 2002 Maine's ranking among the 50 states was 8<sup>th</sup>; in 2004, it was ranked at 13<sup>th</sup>; in 2006 it was ranked at 8<sup>th</sup>; and in 2008 it was ranked 6<sup>th</sup>.

In a recent report, *Fiscal Data for State Workers' Compensation Systems*, designed to provide employers and public policymakers with comparative statistics on state workers' compensation costs, Maine was listed as one of the states with the largest decrease in its benefit costs rate: Alabama (-7.9%), Colorado (-11.2%), Kansas (-16.5%), **Maine (-12.9%)**, Nevada (-14.7%), Rhode Island (-15.2%), and Utah (-13.2%).

And in the most recent issue of *Workers' Compensation Policy Review* (September/October 2008) Maine has been at the national average for "cash benefits, medical benefits" and "total cash and medical benefits."

Maine has gone from one of the costliest states in the nation to one that is moving to the level of average costs for both premiums and benefits and has positioned itself to continue this trend. Maine appears to have struck a balance between reasonable costs and reasonable benefits, all within the Governor's policy of keeping Maine fair-minded and competitive.

The Board will submit, at least, two bills for consideration during the First Regular Session of the 124<sup>th</sup> Legislature.

The first bill will change the assessment process so that assessment collections which exceed 10% of the maximum assessment are used to reduce the annual assessment on insured employers.

The second bill clarifies that Maine Insurance Guaranty Association (MIGA) is required to pay all penalties for non-compliance of the Maine Workers' Compensation Act, with the exception of the penalty in Section 359(2) provided for in Title 39-A.

An independent accountant report conducted by Blake, Hurley, McCallum & Conley gave the Board a clean bill of health in regard to its assessment and budgetary procedures and advanced recommendations to improve the process, most of which have been implemented by the Board. One of the recommendations that has not been dealt with was to legislatively change the "assessment statute to require insurance companies to pay assessments on the same basis as the self-insureds" (cash basis in lieu of rate basis). The change would simplify the process and reduce administrative costs, but would be very cumbersome for the insurance companies to implement.

The Workers' Compensation Board has made significant progress in regard to a Facility Fee Schedule to contain health care costs. In 2007, the Board contracted with Ingenix to review hospital inpatient, outpatient, and ambulatory surgical center charges and costs. Four meetings

have been held with the consensus-based rulemaking group. Although that group was able to reach consensus on the methodology, they were unable to agree on the base rate. Staff will recommend a proposed rule to the Board in January 2009. The objectives of the Fee Schedule include: providing access to quality care for injured workers, ensuring that providers are paid fairly, reducing and containing healthcare costs, and, creating clarity in rules and simplicity for maintenance.

The Facility Fee Schedule should not be viewed as a one-time event, accordingly, Board Staff has recommendations for future courses of action:

- Medicare updates should be reviewed and adjusted annually
- Payment rates should be recalculated and adjusted annually
- Expenditures should be analyzed annually
- Ingenix should be retained for one year to review and analyze the data and make recommendations to the Board as to adjustments to the Facility Fee Schedule.

Another issue to be dealt with in 2009 is employee misclassification, which is a huge problem in Maine as well as nationally. The Governor is prepared to issue an Executive Order appointing a Task Force to analyze the problem in Maine and to make recommendations within the next 12 months to the Governor.

Overall, dispute resolution is performing at peak levels. Compliance with the Workers' Compensation Act is high. Frequency of claims is down. Compensation rates have dropped 43 percent since 1993. The Superintendent of Insurance has approved a 7.6 percent rate reduction for 2009. And, MEMIC has recently declared a \$15 million dividend to Maine businesses. All of which contribute to one of the more stable workers' compensation systems in the country.

## **BUREAU OF INSURANCE**

The advisory loss costs, the portion of the workers' compensation rates which cover projected loss and loss adjustment expenses, has dropped in each of the past two years. They are now, on average, nearly 43 percent lower than they were at the time of the last major reform to the workers' compensation system in 1993. The most recent reduction in loss costs of -7.6% became effective on January 1, 2009. Although medical costs in policy year 2006 stayed nearly the same as in policy year 2005, they have risen significantly since policy year 2000. This development is important because medical benefits constitute 53 percent of the total benefit costs in Maine. Medical costs and services are rising faster than overall inflation as measured by the Consumer Price Index, and are rising faster than wages.

The decrease in advisory loss costs is not evenly distributed across all rating classifications. Although all five industry group experienced declines, they ranged from just under six percent to greater than nine percent as shown here:

<u>Industry Group</u>	<u>Percent Decrease</u>
Miscellaneous	-9.2%
Manufacturing	-9.1%
Office Clerical	-8.5%
Contracting	-7.0%
Goods & Services	-5.9%

The change in loss costs for individual classifications within each group varies depending on the experience within each classification. Some employers will see premium decreases while other employers will see increases.

Maine Employers' Mutual Insurance Company (MEMIC) is the insurer of last resort in Maine. Although MEMIC's market share has dropped each of the last three years, the workers' compensation insurance market is still very concentrated. Much of the business is written by a small number of companies. There are, however, continued signs that pricing has become more competitive. Some insurers have lowered their rates in hopes of attracting business. Additionally, the number of insurance companies becoming licensed to provide workers' compensation coverage in Maine has been on the increase for several years. Insurers other than MEMIC do not have to offer coverage to employers and can be more selective in choosing which employers to underwrite. In order to become eligible for lower rates, an employer needs to have a history of few or no losses, maintain a safe work environment, be willing to follow loss control recommendations, and strive to prevent and control any future losses. New businesses and businesses with unfavorable loss experience likely have fewer options available.

Twenty seven insurers wrote more than \$1 million each in annual premium in 2007; this was two more companies writing at that volume of business than in 2006. The top 10 insurance groups wrote 94% of the workers' compensation insurance in the state in 2007, a two percent drop from 2006. Self-insured employers represented over 42% of the overall workers' compensation market in 2007, the second consecutive increase after reaching a low of about 40% in 2007. Self-insurance continues to be a viable alternative to the insurance market for some employers.

## BUREAU OF LABOR STANDARDS

The Bureau of Labor Standards (BLS) of the Maine Department of Labor (MDOL) works in collaboration with the Maine Workers' Compensation Board (WCB) in the prevention of occupational injuries and illnesses by a variety of means. Under Title 26 MRSA § 42-A, the BLS is charged with establishing and supervising safety education and training programs. Additionally, the BLS has the authority to collect and analyze statistical data on work-related injuries and illnesses and their effects. The MDOL is also responsible for enforcement of Maine labor laws and the related rules and standards, including occupational safety and health standards in the public sector.

SafetyWorks! is an identity that encompasses the occupational safety and health (OSH) training, consultation and outreach functions of the BLS. These activities include use of WCB data to respond to requests for information from the OSH community and the general public on the

safety and health of Maine workers. SafetyWorks! instructors also design their safety training programs based on industry profiles generated from data from the WCB *First Reports of Occupational Injury or Disease* and other sources.

In terms of enforcement, the Wage and Hour Division of the BLS reviews and approves work permit applications to protect minor workers and inspects employers for compliance with Maine child labor law. The Wage and Hour Division may use the data from the WCB *First Reports*, among other criteria, to select employers for inspection. The Workplace Safety and Health Division of the BLS enforces safety regulations *in the public sector only*. The Workplace Safety and Health Division prioritizes state and local agencies for inspection based on the agency's injury and illness data from the WCB, the results of the Federal Bureau of Labor Statistics Survey of Occupational Injuries and Illnesses, or complaints from employees or employee representatives.

Effective workplace injury and illness prevention requires a detailed working knowledge of all factors contributing to occupational safety and health. The WCB collects data from its *First Reports*, which the BLS electronically imports for coding and analysis. In addition, the following annual data collections are administered by the Research and Statistics Unit of the BLS: 1) the Federal Bureau of Labor Statistics' Survey of Occupational Injuries and Illnesses, 2) the Federal Occupational Safety and Health Administration's (OSHA) Data Initiative, and 3) the Census of Fatal Occupational Injuries (CFOI). Taken together, the results of these surveys provide an epidemiological profile of occupational injuries and illnesses in Maine. The BLS also conducts research on narrower foci. In 2008 such research took the form of:

- Continuation of capacity building in OSH surveillance in cooperation with the Maine Center for Disease Control and Prevention, and
- Expansion of the in-house of an occupational fatality reporting program similar to the federal Fatality Assessment, Control, and Evaluation (FACE) program.

A serious problem is missing data in WCB *First Reports* submitted by Electronic Data Interchange (EDI). Missing fields prevent useful analysis and BLS must therefore collect the data by phone. In 2007, a Value-Stream Mapping (VSM) team determined that BLS case coding quality was the same as before EDI. However, coding was taking more effort (about twice as much overall) to maintain that quality. The VSM team was able to show that almost 60% of the incoming cases had problems, some involving multiple fields. The VSM process identified and implemented a series of changes, including correcting a general programming error that had affected half of the cases entering the coding process. These changes resulted in significant improvements in the coding process.

A separate, chronic problem in the use of WCB data is that around 50% of *First Reports* are missing the date for the employee's return to work. The "return to work" date is a critical data element for a number of important purposes. The problem is at least partly due to a built-in functionality of the WCB system. The EDI process seems to be improving the results in this area somewhat, but there is still a long way to go.

The Occupational Safety and Health Data Collection and Injury Prevention Work Group was convened September 29, 2003, by the Department of Labor under 2003 Public Law chapter 471. Membership includes representatives of the WCB staff. Among the primary purposes of the Work Group is the identification of ways to improve the collection and analysis of occupational safety and health data. Such problems in data collection and sharing are being closely examined and there is good reason to hope for improvements. The Work Group will likely be reporting to the legislature in late 2009 on specific problems and recommendations, particularly the submission of “medical-only” reports.

The BLS applied for no research grants in 2007 because National Institute of Occupational Safety and Health (NIOSH) funding was unavailable. The Maine Occupational Research Agenda (MORA), created in 2000 on the model of the National Occupational Research Agenda, provided input to BLS on a variety of OSH issues through review of relevant projects in 2008.

In 2008, the Research and Statistics Unit of BLS continued its data outreach initiative, placing its accumulated data and data-related services before the public. SafetyWorks! administered the Safety and Health Achievement Recognition Program (SHARP) in the private sector and began the parallel Safety and Health Award for Public Employers (SHAPE) in the public sector as means of recognizing outstanding employer safety programs. Eleven employers were admitted to the SHARP and ten to the SHAPE in 2008.

There was limited legislative action directly impacting occupational safety and health in the Second Regular and First Special Sessions of the 123<sup>rd</sup> Legislature.

**SECTION A**

**WORKERS' COMPENSATION BOARD**

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**WORKERS' COMPENSATION BOARD**

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## **1. INTRODUCTION**

The original agency, known as the Industrial Accident Board, began operations on January 1, 1916. It became the Workers' Compensation Commission in 1978. It became the Workers' Compensation Board in 1993.

The major programs of the Board fall into six categories: (1) Dispute Resolution; (2) Compliance – Monitoring, Auditing, and Enforcement (MAE) Program; (3) Worker Advocate Program; (4) Independent Medical Examiners/Medical Fee Schedule; (5) Technology; and (6) Central and Regional Office support.

The implementation of Standard Operating Procedures (SOPs) has resulted in the elimination of backlogs and an efficient dispute resolution system. But a recent Law Court decision in regard to the Independent Medical Examiner program has reversed some of the progress. The Law Court holding in *Lydon v. Sprinkler Systems* has resulted in a reduction in the number of independent medical examiners causing delays to the formal hearing process. Cases without an IME are processed within 8 months, while cases with an IME are taking over 11 months to process through the formal hearing system. The Board's ability to attract doctors in the appropriate specialties to serve as independent medical examiners has been difficult and in order to ameliorate the problem the Board will consider in 2009 raising the fee schedules for the IMEs.

The MAE Program has dramatically improved compliance throughout the industry both as to payments and filings. The basic goals of the programs are to (1) provide timely and reliable data to policy-makers; (2) monitor and audit payments and filings; (3) identify insurers, self-insurers and third-party administrators that are not complying with minimum standards.

The Worker Advocate Program has given injured workers access to advocates improving their likelihood of receiving statutory benefits. Over 50% of injured workers are represented by advocates at the mediation level and over 30% are represented by advocates at the formal hearing level.

The Board has recently mandated the electronic filing of First Reports of Injury (July 1, 2006), Notices of Controversy (April to June 2006), Memorandums of Payment and related documents (May 1, 2009), and Proof of Coverage (May 1, 2009).

The Board is not a General Fund agency and receives its revenue to fund its operations through an assessment on Maine's employers. The Legislature established the assessment as a revenue source to fund the Board, but capped the assessment, limiting the amount of revenue which can be assessed.

The Board's assessment was adequate to fund the Board's operations until FY97. In 1997, the Board implemented legislation that expanded the Worker Advocate Program and created the MAE Program. The cost of these programs has been in excess of the amount allocated for the task. The cost of these programs, increases in employee salaries and benefits, and general

inflation created budgetary problems for the Board, in light of the maximum assessment set by law.

The Legislature, recognized the urgency of the Board's situation in FY02, taking two steps: (1) authorizing the use of \$700,000 from the Board's reserve account; and (2) authorizing a one-time increase in the maximum assessment of \$300,000 to provide temporary assistance to the Worker Advocate Program. The Legislature also recognized the urgency of the Board's situation in FY03, taking the following steps: (1) authorizing the use of reserve funds in the amount of \$1,300,000; (2) increasing the assessment to fund a hearing officer position in Caribou in the amount of \$125,000; and (3) allocating funds from reserves to fund actuarial studies and arbitration services to determine permanent impairment thresholds, and to fund a MAE Program position in the amount of \$135,000. These were short-term solutions and during the 2003 Legislative Term the Legislature increased the Board's assessment cap to \$8,350,000 in FY 04 and \$8,525,000 in FY 05. The Legislature also provided for greater discretion in the use of the Board's reserve account. Through the use of the reserve account, the Board was able to fund the FY-06-07 budget. The Legislature increased the Board's assessment for FY 07-08 to \$9,820,178, for FY 08-09 to \$10,000,000, for FY 09-10 to \$10,400,000, for FY 10-11 to \$10,800,000, and for FY 11-12 to \$11,200,000, and requested an audit of the Board's performance for the past 10 years and a review of the Worker Advocate and Monitoring, Audit, & Enforcement Programs to determine if they were adequately funded.

The Blake Hurley McCallum & Conley audit and program report was submitted to the Governor, the 123<sup>rd</sup> Second Regular Session of the Legislature, the Workers' Compensation Board, and the Department of Administrative and Financial Services in January of 2008 relating to the Board's fiscal operations for the past 10 years. The Board received a clean bill of health for both its budgetary and assessment procedures along with a number of recommendations to further improve the efficiency of the Board's fiscal operations.

The Board is attempting to improve efficiency and lower costs through administrative efforts ranging from mandating electronic data interchange, enforcing performance standards in the dispute resolution process, and enforcing compliance through the MAE program and the Abuse Investigation Unit.

In 2004 the Governor introduced a Bill, which was enacted by the Legislature as Chapter 608 and entitled "*An Act to Promote Decision-Making Within the Workers' Compensation Board.*" The purpose of the legislation was to break the gridlock that adversely affected the Board. The legislation reduced the size of the Board from eight to seven members and empowered the Governor to appoint an executive director, to serve as chair and chief executive officer of the Board. The Board has since resolved most of the gridlock issues and functions in a more effective manner in setting policy for the Board's business.

The Board worked diligently during the course of 2008 with a consensus based rulemaking group to formulate a facility fee schedule to help contain healthcare costs for hospitals and ambulatory care centers. Staff will recommend a proposed rule to the Board in January 2009. The objectives of the Fee Schedule include: reducing and containing the increase of healthcare

costs; providing access to quality care for injured workers; ensuring that providers are paid fairly; and, creating clarity in rules and simplicity for maintenance.

Prior to the inception of the Maine Workers' Compensation Act (January 1, 1993), Maine was one of the costliest states in the nation in regard to workers' compensation costs. Recent studies demonstrate a dramatic improvement for Maine in comparison to other states. Maine has gone from one of the costliest states in the nation to one that is at average costs for both premiums and benefits, all within the Governor's policy of making the system fair and competitive for Maine's employees and employers.

## **2. ENABLING LEGISLATION AND HISTORY OF MAINE WORKERS' COMPENSATION**

### **I. ENABLING LEGISLATION.**

39-A M.R.S.A. § 101, et seq. (Maine Workers' Compensation Act of 1992)

On January 1, 1993, Title 39, which contained the Workers' Compensation Act of 1991 and all prior workers' compensation acts, was repealed and replaced with Title 39-A, the Workers' Compensation Act of 1992.

### **II. REVISIONS TO ENABLING LEGISLATION.**

The following are some of the revisions made to the Act since 1993.

- **§ 102(11)(B-1).** Tightened the criteria for wood harvesters to obtain a predetermination of independent contractor status.
- **§ 113.** Permits reciprocal agreements to exempt certain nonresident employees from coverage under the Act.
- **§ 151-A.** Added the Board's mission statement.
- **§ 153(9).** Established the monitoring, audit & enforcement (MAE) program.
- **§ 153-A.** Established the worker advocate program.
- **§ 201(6).** Clarified rights and benefits in cases which post-1993 work injuries aggravate, accelerate, or combine with work-injuries that occurred prior to January 1, 1993.
- **§ 213(1-A).** Defines "permanent impairment" for the purpose of determining entitlement to partial incapacity benefits.
- **§ 224.** Clarified annual adjustments made pursuant to former Title 39, §§ 55 and 55-A.
- **§ 328-A.** Created rebuttable presumption of work-relatedness for emergency rescue or public safety workers who contract certain communicable diseases.
- **§§ 355-A, 355-B, 355-C, and 356.** Created the Supplemental Benefits Oversight Committee.
- **§§ 151, Sub-§1.** Established the Executive Director as a gubernatorial appointment and member and Chair of the Board of Directors. Changed the composition of the Board from eight to seven members.

### **III. STATE AGENCY HISTORY.**

The original agency, the Industrial Accident Board, began operations on January 1, 1916. In 1978, it became the Workers' Compensation Commission. In 1993, it became the Workers' Compensation Board.

#### **A. The Early Years of Workers' Compensation.**

A transition from common law into the statutory system we know today occurred during the late teens and early 1920's. Earlier, an injured worker had to sue his employer and prove fault to obtain compensation. Workers' compensation was conceived as an alternative to tort. Instead of litigating fault, injured workers would receive a statutorily determined compensation for lost wages and medical treatment. Employers gave up legal defenses such as assumption of risk or contributory negligence. Injured workers gave up the possibility of damages, beyond lost wages and medical treatment, such as pain and suffering and punitive damages. This historic bargain, as it is sometimes called, remains a fundamental feature of workers' compensation. Perhaps because of the time period, financing and administration of benefit payments remained in the private sector, either through insurance policies or self-insurance. Workers' compensation disputes still occur in a no fault system. For example, disputes arise as to whether the disability is related to work; how much money is due the injured worker; and, how much earning capacity has been permanently lost. Maine, like other states, established an agency to process these disputes and perform other administrative duties. Disputes were simpler. Injured workers rarely had lawyers. Expensive, long term, and medically complicated claims, such as carpal tunnel syndrome or back strain, were decades away.

#### **B. Adjudicators as Fact Finders.**

In 1929, the Maine Federation of Labor and an early employer group listed as "Associated Industries" opposed Commissioner William Hall's re-nomination. Testimony from both groups referred to reversals of his decisions by the Maine Supreme Court. This early feature of Maine's system, direct review of decisions by the Supreme Court, still exists today. The Supreme Court decides issues regarding legal interpretation, and does not conduct a whole new trial. In Maine, the state agency adjudicator has historically been the final fact finder.

Until 1993, Commissioners were gubernatorial appointments, subject to confirmation by the legislative committee on judiciary. The need for independence of its quasi-judicial function was one of the reasons why it was established as an independent agency, rather than as a part of a larger administrative department within the executive branch. The smaller scale of state government in 1916 no doubt also played a role.

#### **C. Transition to the Modern Era.**

In 1974, workers' compensation coverage became mandatory. This and other significant changes to the statute were passed without an increase in appropriation for the Industrial Accident Commission. In 1964 insurance carriers reported about \$3 million in direct losses paid. By 1974 that had grown to about \$14 million of direct losses paid. By 1979, direct losses paid by carriers

totaled a little over \$55 million. By 1984, it had grown to almost \$128 million. These figures do not reflect benefits paid through self-insurance. This exponential growth of the system resulted from legislative changes during the late 1970's and set the stage for a series of workers compensation crises that occurred throughout the 1980's and into the early 1990's.

During the early 1970's time limits were removed for both total and partial wage loss benefits. Inflation adjustments were added. The maximum benefit was set at 200% of the state average weekly wage. Also, laws were passed making it easier for injured workers to secure the services of an attorney. The availability of legal representation greatly enhanced an injured worker's likelihood of receiving benefits, especially in a complex case. And, statutory changes and evolving medical knowledge brought a new type of claim into the system. The law no longer required a specific accident. Doctors began to connect injuries such as carpal tunnel syndrome and back problems to work and thus brought these injuries within the coverage of workers' compensation.

Such injuries required benefit payments for longer periods than most accidental injuries. These claims were more likely to involve litigation. Over the course of a decade, rising costs quickly transformed workers compensation into a contentious political issue in the late 1980's and early 1990's.

In 1980, Commissioners became full-time and an informal conference process was added to attempt to resolve disputes early in the claim cycle, before a formal hearing.

Additionally, regional offices were established in Portland, Lewiston, Bangor, Augusta, and Caribou, supported by the central administrative office in Augusta.

In 1987, three full-time Commissioners were added, bringing the total to 11, in addition to the Chair. Today, the Board has nine Hearing Officers.

The workers' compensation environment of the 1980's and early 1990's was an extraordinary time in Maine's political history. Contentious legislative sessions regarding workers' compensation occurred in 1982, 1985, 1987, 1991, and 1992. In 1991, then Governor John McKernan tied his veto of the State Budget to changes in the workers' compensation statute. State Government was shut down for about three weeks.

In 1992, a Blue Ribbon Commission made a series of recommendations which were ultimately enacted. Inflation adjustments for both partial and total benefits were eliminated. The maximum benefit was set at 90% of state average weekly wage. A limit of 260 weeks of benefits was established for partial disability. These changes represented substantial reductions in benefits for injured workers, particularly those with long term disabilities. Additionally, the section of the statute concerning access to legal representation was changed making it more difficult for injured workers to secure the services of private attorneys.

Maine Employers' Mutual Insurance Company was established. It replaced the assigned risk pool and offered a permanent source of coverage. Despite differing views on the nature of the

problems within the preceding and current system, virtually all observers agree that MEMIC has played a critical role in stabilizing the workers' compensation environment in Maine.

Based on the recommendation of the Blue Ribbon Commission, the Workers' Compensation Board was created directly involving labor and management in the administration of the State agency.

The Board of Directors originally consisted of four Labor members and four Management members, appointed by the Governor based on nomination lists submitted by the Maine AFL-CIO and Maine Chamber of Commerce. The eight Directors hired an Executive Director to run the agency. In 2004 legislation was enacted to reduce the Board to three Labor Directors and three Management members. The Executive Director became a gubernatorial appointment, confirmed by the legislative committee on Labor, for a term concurrent with the Governor.

The Board of Directors appoints Hearing Officers to adjudicate Formal Hearings. And, a two step process replaced informal conferences: troubleshooting and mediation.

In 1997, legislation was enacted which provided more structure to case monitoring operations of the Board and created the MAE program. Also in 1997, a worker advocate program, begun by the Board, was expanded by the Legislature.

In terms of both regulatory and dispute resolution operations the Board has experienced significant accomplishments. In terms of its traditional operation, dispute resolution, the Board can show an efficient informal process. Between troubleshooting and mediation, approximately 75% of initial disputes are resolved within 80 days from the date a denial is filed. An efficient formal hearing process that had reduced timelines to an acceptable 7.3 months for processing cases in 2000. Gridlock by the Board of Directors regarding appointment of Hearing Officers occurred in 2003 and 2004, resulting in slightly longer time frames at the formal level, about 10.5 months in 2004. The problem was exacerbated by the Law Court decision in *Lydon v. Sprinkler Systems* significantly reducing the number of independent medical examiners (IME) from 30 to 11. Although the gridlock of the appointment of hearing officers has been broken, the IME problem persists, resulting in higher timeframes at formal hearing.

In an apples to apples comparison, matching the complexity of the dispute and the type of litigation, the Board's average time frame of about nine months for formal hearings is rapid, compared to other states, and especially if compared to court systems for comparable personal injury cases.

The agency was criticized for not doing more with its data gathering and regulatory operations during the late 1980's and early 1990's. But the benefit of a relational database installed in 1996, and a modern programming language, the agency is making progress. Filings of first reports and first payment documents are systematically tracked. Significant administrative penalties have been pursued in several cases. The computer applications and the abuse unit are doing a better job of identifying employers, typically small employers, with no coverage. No coverage hearings are regularly scheduled. The Board has mandated the electronic filing of First Reports with an effective date of July 1, 2005. The Board has also mandated the electronic filing of denials, with

an effective date of April through June 2006, and for payments, with an anticipated implementation date of April 2009.

During the late 1990's, the Board of Directors began to deadlock on significant issues such as the appointment of Hearing Officers, the adjustments to the benefit structure under section 213, and the agency budget. By 2002, this had become a matter of Legislative concern. Finally, in 2004, legislation was proposed by Governor Baldacci and enacted to make the Board's Executive Director a tie-breaking member of the Board and its Chair. The Executive Director became a gubernatorial appointment, subject to confirmation by the legislative Committee on Labor, serving at the pleasure of the Governor. With the new arrangement, gridlock due to tie votes is no longer an issue. The Executive Director casts deciding votes when necessary. However, the objective is still to foster cooperation between the Labor and Management caucuses, which has occurred more frequently since 2004.

Chapter 208, A Resolve to Appoint Members To and Establish Terms for the Workers' Compensation Board, was enacted during the second session (2008) of the 123<sup>rd</sup> Legislature. The purpose of the Resolve is to change the membership on the Board while maintaining continuity. The Governor will appoint new members during the first session (2009) of the 124<sup>th</sup> Legislature subject to review and confirmation by the Legislature.

### **3. DISPUTE RESOLUTION**

#### **I. INTRODUCTION.**

The Workers' Compensation Board has regional offices throughout the State, in Caribou, Bangor, Augusta, Lewiston and Portland that handle dispute resolution functions. The regional offices handle troubleshooting, mediation and formal hearings.

#### **II. THREE TIERS OF DISPUTE RESOLUTION.**

On January 1, 1993, Title 39, which contained the Workers' Compensation Act of 1991 and all prior workers' compensation acts, was repealed and replaced with Title 39-A, the Workers' Compensation Act of 1992. The new Title 39-A created a three tiered dispute resolution process.

First, at the troubleshooting stage, a claims resolution specialist informally attempts to resolve disputes by contacting the employer and the employee and identifying the issues. Many times, additional information, often medical reports, must be obtained in order to discuss possible resolutions. If a resolution of the dispute is not reached after reviewing the necessary information, the claim is referred to mediation.

Second, at the mediation stage, a case is scheduled before one of the Board's mediators. The parties attend the mediation at a regional office or through teleconference. At mediation, the employee, the employer, the insurance adjuster and any employee or employer representatives such as attorneys or advocates meet with the mediator in an attempt to reach a voluntary resolution of the claim. The mediator requests each party to state its position and tries to find common ground. At times, the mediator meets with each side separately to sort out the issues. If the case is resolved at mediation, the mediator writes out the terms of the agreement, which is signed by the parties. If the case is not resolved at mediation, it is referred for formal hearing.

Third, at the formal hearing stage, the parties are required to exchange information and medical reports and answer specific questions that pertain to the claim. After the information has been exchanged, the parties file with the Board a "Joint Scheduling Memorandum," which lists the witnesses who will testify and estimates the time needed for hearing. Depositions of medical witnesses oftentimes secluded to elicit or dispute expert testimony. At the hearing, witnesses for both sides testify and evidence is submitted. In most cases, the parties are represented either by an attorney or a worker advocate. Following the hearing, position papers are submitted and the hearing officer issues a decision.

The number of cases entering each phase for the period 1999 thru 2008 is shown in the table below:

Cases Entering Dispute Resolution			
Year	Trouble Shooting	Mediation	Formal Hearing
1999	8,899	3,693	2,312
2000	9,442	3,642	2,433
2001	10,132	3,830	2,725
2002	9,677	3,507	2,481
2003	9,996	3,582	2,532
2004	9,356	3,303	2,458
2005	8,784	3,003	2,088
2006	8,962	2,652	1,915
2007	8,749	2,499	1,765
2008	8,384	2,428	1,680

The raw counts of cases entering each stage are not logical subsets. The Board has done occasional studies of subsets to evaluate the results of each stage. In general, of 100 disputes entering Trouble Shooting approximately half (50) will go on to Mediation. Of the 50 going to Mediation, approximately half (25) will continue to the Formal Hearing stage.

### III. TROUBLESHOOTING STATISTICAL SUMMARY

The following table shows, the number of filings and dispositions at Mediation, the average timeframes, and number of cases pending at the end of each year for the period 1999 thru 2008.

Trouble Shooting Cases Assigned, Disposed, and Pending				
Year	Assigned	Disposed	Pending 12/31	Avg Days at TS
1999	8,899	9,396	747	34
2000	9,442	9,426	763	25
2001	10,132	10,139	756	24
2002	9,677	9,466	967	23
2003	9,996	10,269	838	27
2004	9,356	9,588	606	27
2005	8,784	8,724	666	27
2006	8,962	8,927	701	27
2007	8,749	8,719	731	27
2008	8,439	8,439	769	30

#### **IV. MEDIATION STATISTICAL SUMMARY.**

The following table shows the number of filings and dispositions at Mediation, the average timeframes, and number of cases pending at the end of each year for the period 1999 thru 2008.

<b>M e d i a t i o n s</b> <b>C a s e s A s s i g n e d , D i s p o s e d , a n d P e n d i n g</b>				
<b>Y e a r</b>	<b>A s s i g n e d</b>	<b>D i s p o s e d</b>	<b>P e n d i n g</b> 1 2 / 3 1	<b>A v D a y s A t M D N</b>
1 9 9 9	3 , 6 9 3	3 , 8 7 5	5 7 5	5 . 5
2 0 0 0	3 , 6 4 2	3 , 5 5 1	6 6 6	5 . 3
2 0 0 1	3 , 8 3 0	3 , 7 4 5	7 5 1	5 . 1
2 0 0 2	3 , 5 0 7	3 , 6 5 5	6 0 3	5 . 4
2 0 0 3	3 , 5 8 2	3 , 3 3 1	8 5 4	6 . 0
2 0 0 4	3 , 3 0 3	3 , 3 9 5	6 6 6	6 . 2
2 0 0 5	3 , 0 0 3	3 , 0 8 4	5 8 5	5 . 9
2 0 0 6	2 , 6 5 2	2 , 7 4 1	4 9 6	6 . 1
2 0 0 7	2 , 4 9 9	2 , 5 3 2	4 6 3	5 . 8
2 0 0 8	2 , 4 2 8	2 , 4 8 8	4 4 3	5 . 5

#### **V. FORMAL HEARING STATISTICAL SUMMARY.**

The following table shows the number of filings and dispositions at Formal Hearing, the average timeframes, and number of cases pending at the end of each year for the period 1999 thru 2008.

<b>F o r m a l H e a r i n g</b> <b>C a s e s A s s i g n e d , D i s p o s e d , a n d P e n d i n g</b>				
<b>Y e a r</b>	<b>A s s i g n e d</b>	<b>D i s p o s e d</b>	<b>P e n d i n g</b> 1 2 / 3 1	<b>A v M o n t h s t o D e c r e e</b>
1 9 9 9	2 , 3 1 2	2 , 8 7 6	1 , 0 9 4	1 0 . 5
2 0 0 0	2 , 4 3 3	2 , 4 1 7	1 , 1 1 0	7 . 4
2 0 0 1	2 , 7 2 5	2 , 5 9 2	1 , 2 4 3	6 . 8
2 0 0 2	2 , 4 8 1	2 , 4 0 0	1 , 3 2 4	7 . 1
2 0 0 3	2 , 5 3 2	2 , 1 9 4	1 , 6 6 2	9 . 5
2 0 0 4	2 , 4 5 8	2 , 4 1 4	1 , 7 0 6	1 0 . 9
2 0 0 5	2 , 0 8 8	2 , 2 6 6	1 , 5 2 8	1 1 . 7
2 0 0 6	1 , 9 1 5	2 , 1 7 3	1 , 2 7 0	1 1 . 7
2 0 0 7	1 , 7 6 5	1 , 9 0 7	1 , 1 2 8	1 0 . 7
2 0 0 8	1 , 6 8 0	1 , 7 2 8	1 , 0 8 0	8 . 4

## **VI. OTHER.**

In late 2007 the Portland accounting firm of Blake, Hurley, McCallum, and Conley completed an audit on the Workers' Compensation Board. One of the findings was that the Advocate program and the Monitoring, Audit, and Enforcement programs needed additional staff to fulfill unmet statutory requirements. The report also noted that because of the current budgetary environment, this needed to be done on an incremental basis. In the past, the Board has shifted resources from other parts of the agency to shore up the MAE and Worker Advocate Programs.

Concurrently, the number of cases entering the Mediation and Formal stages of dispute resolution has declined noticeably during the last few years. So much so, that the Board will consider reallocating positions within dispute resolution to the MAE and Advocate programs.

This process is in an early stage as this report is being prepared. However, shifting of resources in the Board's organization is anticipated for 2009 and 2010.

## **4. OFFICE OF MONITORING, AUDIT, AND ENFORCEMENT**

### ***HISTORY***

In 1997, the Maine Legislature, with the support of Governor Angus S. King, Jr., enacted Public Law 1997, Chapter 486 to establish the Office of Monitoring, Audit, and Enforcement (MAE). The basic goals of this office are to: (1) provide timely and reliable data to policymakers; (2) monitor and audit payments and filings; and (3) identify insurers, self-administered employers, and third-party administrators (collectively “insurers”) that are not complying with minimum standards.

#### **I. MONITORING**

The key component of the monitoring program is the production of Quarterly and Annual Compliance Reports. To ensure that the Compliance Reports would be as accurate as possible, a pilot project was undertaken in May 1997. The goals of the pilot project were to: (1) measure the Board’s data collection and reporting capabilities; (2) report on the performance of insurers; and (3) inform interested parties of the expectations of the Compliance Reports.

The 2007 Quarterly and Annual Compliance Reports were unanimously accepted by the Board. The 2007 Annual Compliance Report shows continued improvement in the performance of insurers since the pilot project (see Tables 2 and 3). This improvement reduces the number of claims that are litigated and results in faster and more accurate payment of lost time benefits.

##### **A. 2007 Annual Compliance Report Overview**

The 2007 Annual Compliance Report can be viewed in its entirety at the Board’s website: [www.maine.gov/wcb/](http://www.maine.gov/wcb/)

###### **1. Lost Time First Reports of Injury**

The Board received 14,395 lost time First Reports of Injury. This represents 352 fewer reports than in 2006 and a long term decline in the number of lost time First Reports of Injury. Eighty-seven percent (86.81%) of lost time First Reports of Injury were filed within 7 days. This is the highest compliance recorded for this indicator to date.

###### **2. Initial Indemnity Payments**

Eighty-seven percent (87.48%) of initial indemnity payments were within 14 days. This is the highest compliance recorded for this indicator to date. The Board benchmark is 80%.

### **3. Initial Memoranda of Payment**

Eighty-five percent (84.72%) of initial Memoranda of Payment were filed within 17 days. This is the highest compliance recorded for this indicator to date. The Board benchmark is 75%.

### **4. Initial Indemnity Notices of Controversy**

Eighty-nine percent (89.06%) of initial indemnity Notices of Controversy were filed within 14 days.

### **5. Potential §205(3) Penalties**

Seventy (70) potential penalties were identified. Eleven (11) (15.71%) had been paid previously. Thirty-seven (37) (52.86%) were paid once the claims administrator was advised. Seven (7) (10%) were referred to the Abuse Investigation Unit and no Board action was taken on 15 (21.43%). Since implementing this process in 2006, over \$74,750 has been issued to claimants in penalties under this Section.

### **6. Late Filed Coverage Notices**

Two thousand four hundred six (2,406) complaints for penalties were issued. One thousand eleven (1,011) (42.02%) had orders issued and the Board received payment. Six hundred six (606) (25.19%) were dismissed. Four hundred seventeen (417) (17.33%) had orders issued and the Board is awaiting payment. Three hundred sixty-nine (369) (15.34%) are pending orders being issued and three (3) (.12%) are awaiting dismissal. Since implementing this process in 2004, over \$726,500 has been collected in late filed coverage notice penalties.

### **7. Utilization Analysis**

Twenty percent (19.76%) of all lost time First Reports of Injury were denied. This represents a decrease of .54% from 2006.

Forty percent (39.96%) of all claims for compensation were denied. This represents a decline of .08% since 2006.

## **B. Corrective Action Plans**

Corrective Action Plans are implemented for insurers with chronic poor compliance. Elements of the plans are reviewed and updated each quarter to track compliance changes and ensure that the elements of the plan are being met.

Compliance information on insurers can be viewed in its entirety at the Board's website: [www.maine.gov/wcb/](http://www.maine.gov/wcb/)

The following insurers have Corrective Action Plans in place:

Ace/ESIS	Crawford & Company
AIG	Gallagher Bassett Claims Services
Cambridge Integrated Services	Hartford/Specialty Risk Services
Claims Management, Inc.	Selective
CNA	Zurich

**Table 1**                   **2007 Quarterly Compliance Reports**

	First Quarter	Second Quarter	Third Quarter	Fourth Quarter
	7 Days	7 Days	7 Days	7 Days
<b>First Reports of Injury Received Within:</b>	84.65%	87.01%	87.00%	87.92%
<b>Initial Indemnity Payments Made Within 14 Days</b>	86.00%	87.59%	89.89%	86.36%
<b>Memoranda of Payment Received Within 17 Days</b>	82.48%	84.76%	86.87%	84.76%
<b>Notices of Controversy Received Within 14 Days</b>	87.87%	91.30%	89.41%	89.00%

Static results based upon data received by the deadline for each quarter.

**Table 2**                   **Annual Compliance**

	Pilot Project 1997*	1999	2000	2001	2002	2003	2004	2005	2006	2007
<b>First Reports of Injury Received Within 7 Days</b>	36.74%	69.20%	78.33%	79.71%	81.73%	82.43%	85.70%	86.12%	84.44%	86.81%
<b>Initial Indemnity Payments Made Within 14 Days</b>	59.39%	79.35%	80.26%	82.79%	85.27%	85.56%	85.30%	86.59%	86.83%	87.48%
<b>Memoranda of Payment Received Within 17 Days</b>	56.78%	75.14%	74.62%	77.08%	80.78%	81.87%	82.81%	83.93%	84.38%	84.72%
<b>Notices of Controversy Received Within 17 Days</b>							91.43%	92.42%	89.29% <sup>1</sup>	89.06% <sup>2</sup>

\*Based on Sample Data for Pilot Project of 1997

Total population data received by March 30 after each calendar year is complete.

**Table 3**                   **Percentage Change Over Time**

	Since Pilot Project 1997*	Since 1999	Since 2000	Since 2001	Since 2002	Since 2003	Since 2004	Since 2005	Since 2006
<b>First Reports of Injury Received Within 7 Days</b>	136.28%	25.45%	10.83%	8.91%	6.22%	5.31%	1.30%	.80%	2.81%
<b>Initial Indemnity Payments Made Within 14 Days</b>	47.30%	10.25%	9.00%	5.66%	2.59%	2.24%	2.56%	1.03%	.75%
<b>Memoranda of Payment Received Within 17 Days</b>	49.21%	12.75%	13.54%	9.91%	4.88%	3.48%	2.31%	.94%	.40%
<b>Notices of Controversy Received Within 17 Days<sup>3</sup></b>							-2.59%	-3.64%	-.26%

\*Based on Sample Data for Pilot Project of 1997

Total population data received by March 30 after each calendar year is complete.

<sup>1</sup> Second Quarter 2006 excluded.

<sup>2</sup> 2007 data represents filing requirement of 14 days. The 2004 – 2006 filing requirement was 17 days.

<sup>3</sup> Negative percentage change reflects change in filing requirement from 17 days (2004-2006) to 14 days (2007).

## FIRST REPORTS OF OCCUPATIONAL INJURY OR DISEASE

Chart 1

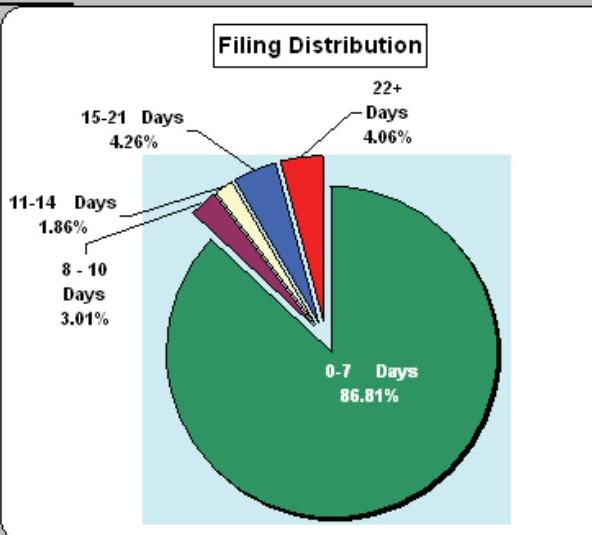
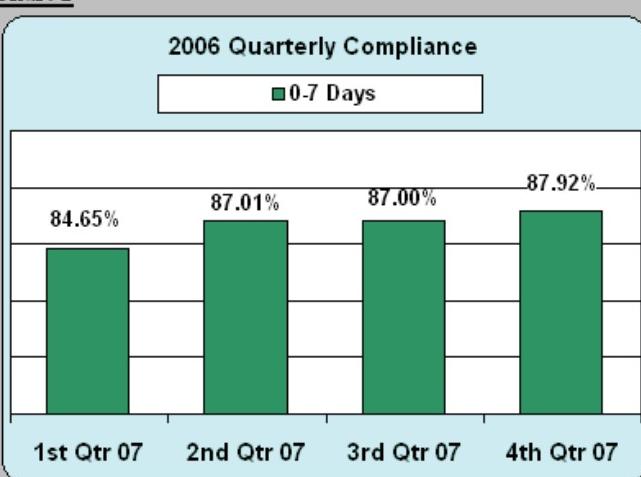


Table 4

### First Reports Received Within:

Days	Count	Percentage
0-7 Days	12,496	86.81%
8-10 Days	434	3.01%
11-14 Days	268	1.86%
15-21 Days	613	4.26%
22+ Days	584	4.06%
Total	14,395	100%

Chart 2



### Number of Lost Time First Reports Received at MWCB Continues to Decline

In 2007, 14,395 Lost Time First Reports were filed with the MWCB, 352 fewer First Reports of Injury (FROIs) than 2006. The compliance rate for timely filing was 86.81%, a 2.37% increase over the 2006 compliance rate of 84.44% and the highest yet achieved by the insurance community.

This marks the seventh year in a row that the number of Lost Time First Reports received at the Board declined which mirrors NCCI data.

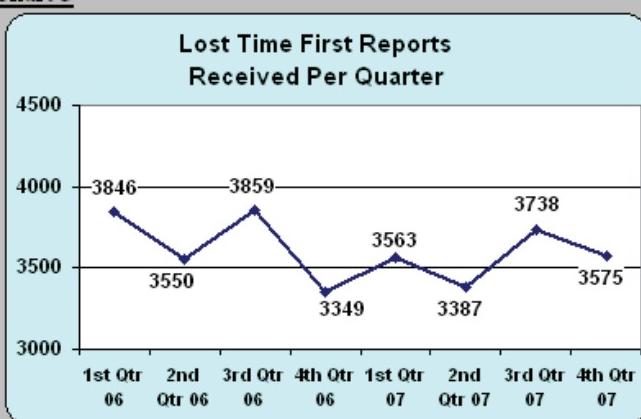
The increase in Lost Time First Report compliance can be attributed mostly to increased outreach, education, training and the insurance community's increased familiarity with the MWCB's EDI system.

Perhaps the largest issue, other than late employer notice influencing late reporting of first reports, are employer UIAN numbers. Accurate UIAN data ensures that claims received at the Board are linked to the appropriate insurance policy and claims administrator in a timely manner.

Incorrect assignment of claims creates unnecessary delays in ensuring due process for claims administrators, employers and employees.

Continued data quality improvement is one of the factors reducing duplicate claims and decreasing unnecessary disputes in the system, both of which are factors in controlling workers' compensation rates.

Chart 3



## PAYMENTS OF INITIAL INDEMNITY BENEFITS

Chart 4

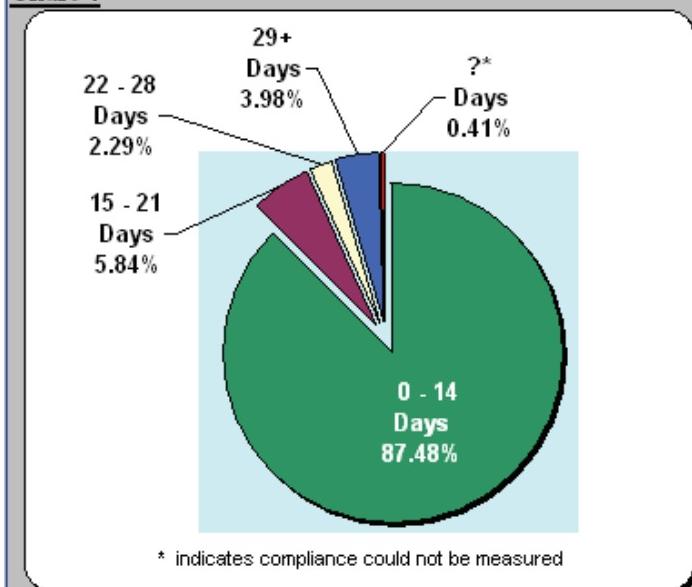


Table 5

### Initial Payments Made Within:

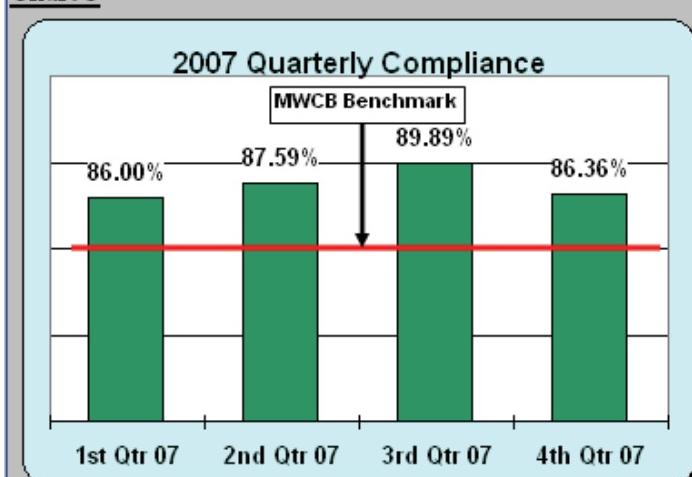
0 - 14 Days	3,432	87.48%
15 - 21 Days	229	5.84%
22 - 28 Days	90	2.29%
29+ Days	156	3.98%
? Days	16	0.41%
<b>Total</b>	<b>3,923</b>	<b>100%</b>

\* 350 Alternate Benefits

### Maine Continues Improvement on Compliance Performance of Initial Indemnity Payments

Injured workers in the State of Maine continue to benefit from the high compliance rate of initial indemnity payments. As displayed below, Maine has one of the higher compliance rates in states that publish this performance indicator.

Chart 5

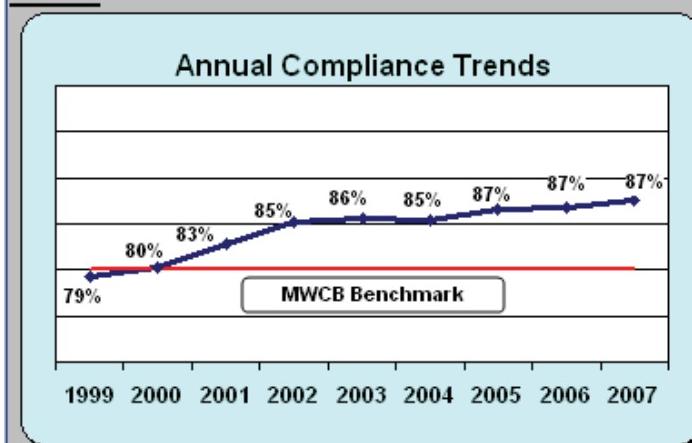


Compliance performance by the insurance community has improved by over 7% since the inception of the Compliance Report and the monitoring program.

The noted improvement in compliance means that, compared to 1999, hundreds more Maine households received a timely initial indemnity benefit payment in 2007.

Workers' compensation research indicates that timely payment of initial benefits is one key factor in helping control the overall cost of a workers' compensation claim.

Chart 6



### Comparing Maine's Initial Payment Compliance to Other States

	2004	2005	2006	2007
Maine	85%	87%	87%	87%
Florida	93%	92%	89%	93%
Wisconsin	84%	84%	84%	84%
Minnesota	86%	86%	87%	88%

## MEMORANDA OF PAYMENT

Chart 7

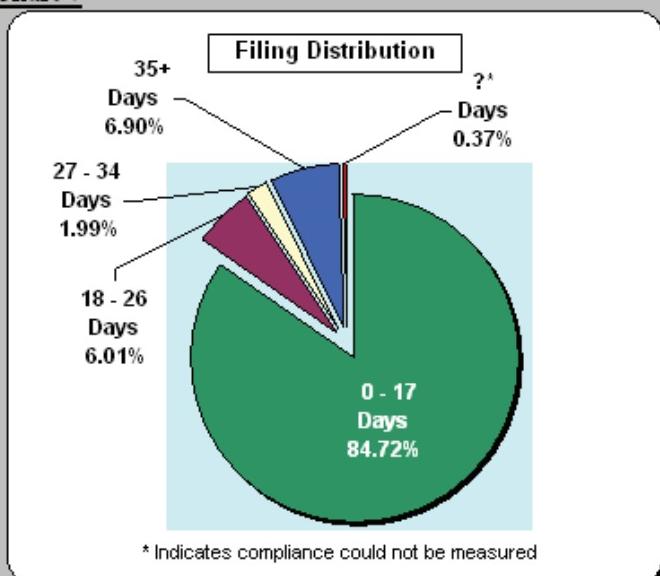


Table 6

### Initial Filing Made Within:

0 - 17 Days	3,620	84.72%
18 - 26 Days	257	6.01%
27 - 34 Days	85	1.99%
35+ Days	295	6.90%
? Days	16	0.37%
<b>Total</b>	<b>4,273</b>	<b>100.00%</b>

### MOP Filing Climbing

The filing of the Memoranda of Payment (MOP) is an important performance indicator for the Maine Workers' Compensation Board.

While the filing of the MOP may not have the tangible benefits to the injured employee that the initial indemnity benefit payment may have, the MOP filing provides the Board with an indicator of how well insurers are complying with the administrative requirements of the Workers' Compensation Act. Studies from the Workers' Compensation Research Institute (WCRI) indicate that proper claims administration and timely payment of claims impacts the overall costs of claims and the time it takes for a claim to be processed through the dispute resolution system.

The MOP Filing performance indicator is important to the administration of Maine claims because it allows the Monitoring Division to assess the compliance of individual insurers.

The prompt filing of the initial MOP also gives the Board's Claims Management staff the opportunity to verify that appropriate compensation benefits are being issued.

Continued improvement for this measurement is an indicator that the Board's Corrective Action Plans are working.

Chart 8

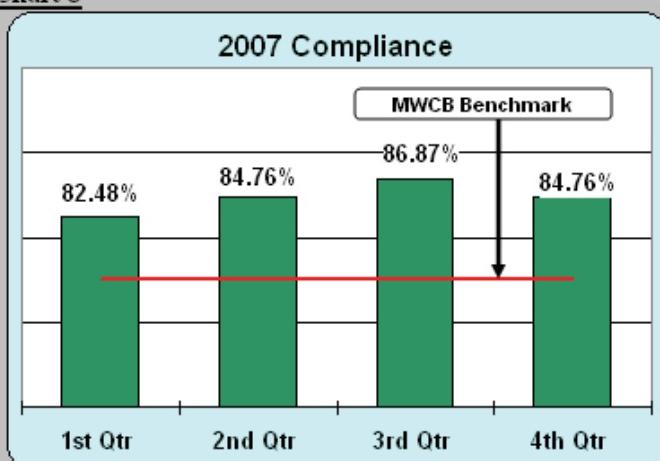
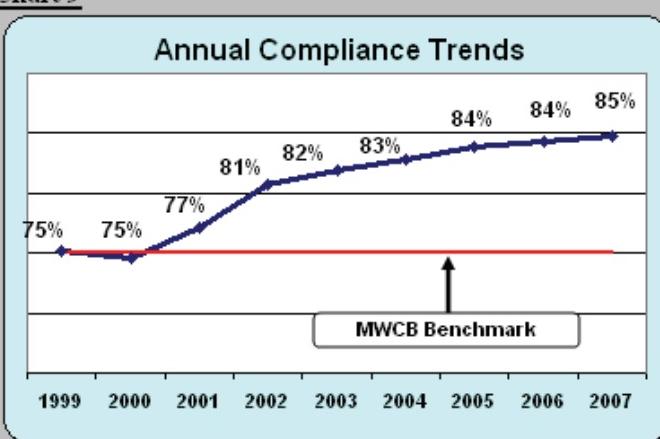


Chart 9



## NOTICES OF CONTROVERSY

Chart 10

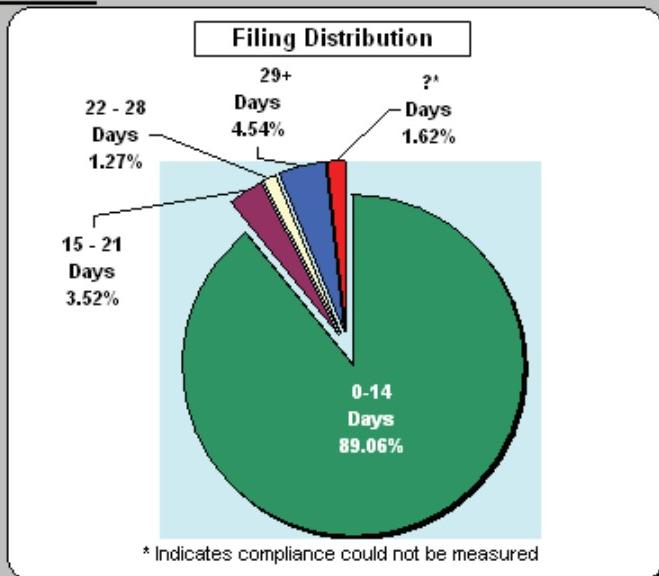


Table 7

### Initial Indemnity NOCs Within:

0 - 14 Days	2,533	89.06%
15 - 21 Days	100	3.52%
22 - 28 Days	36	1.27%
29+ Days	129	4.54%
? Days	46	1.62%
<b>Total</b>	<b>2,844</b>	<b>100.00%</b>

### NOC Filing Compliance

2007 marked the first full year that all Initial Indemnity Notices of Controversy (NOCs) were required to be filed in the IAIABC Release III Electronic Data Interchange (EDI) format.

The 2007 data indicates that 89.06% of the Initial Indemnity Notices of Controversy (NOCs) were filed timely using EDI. This is 2.2% decrease from the highest compliance reached by the industry when NOCs were filed in the paper format.

This compliance performance is higher than either First Reports, Initial Indemnity Payments and filing of Initial MOPs even though the filing requirement was reduced by Board motion from 17 to 14 days in 2007.

The Monitoring Division anticipates that compliance in this performance indicator will improve as more claims administrators go through the "learning curve" associated with EDI.

In 2008 the Board will be conducting a research study on claims activity after the filing of Initial Indemnity NOCs.

Chart 11

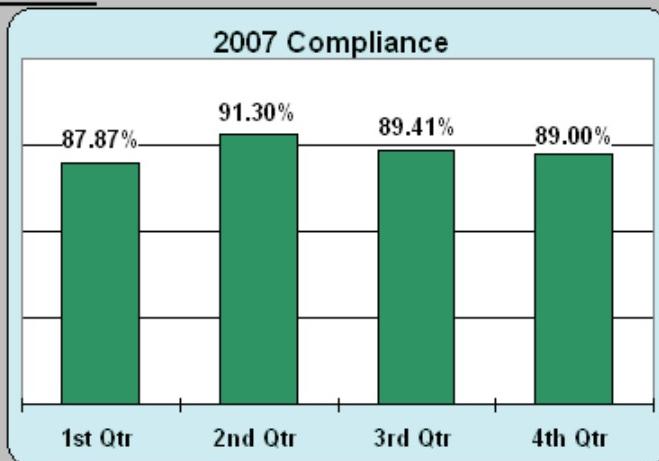
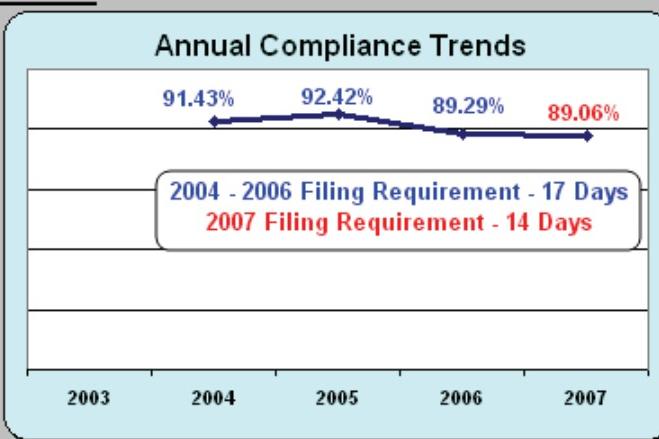


Chart 12



## POTENTIAL 205(3) VIOLATIONS

Chart 13

### Possible Violation Distribution

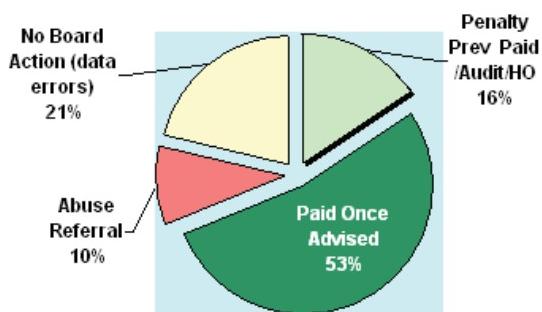


Table 8

### Possible Violation Distribution

Penalty Prev. Paid/Audit/HO	11	15.71%
Paid Once Advised	37	52.86%
Abuse Referral	7	10.00%
No Board Action (data errors)	15	21.43%
<b>Total</b>	<b>70</b>	<b>100%</b>

\$35,450 issued to claimants in penalties.  
\$7,050 in penalties awaiting resolution.

1.8% of all Initial Indemnity Payments

## LATE FILED COVERAGE NOTICES

Chart 14

### Complaint Distribution

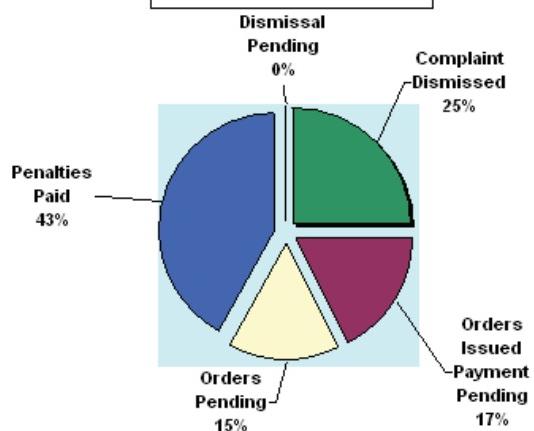


Table 9

### Complaint Distribution

Complaint Dismissed	606	25.19%
Orders Issued Payment Pen	417	17.33%
Orders Pending	369	15.34%
Penalties Paid	1011	42.02%
Dismissal Pending	3	0.12%
<b>Total</b>	<b>2,406</b>	

\$101,100 collected in penalties  
\$78,600 pending in penalties

The Monitoring Division cannot accurately reflect the total percent of all coverage notices due to database limitations.

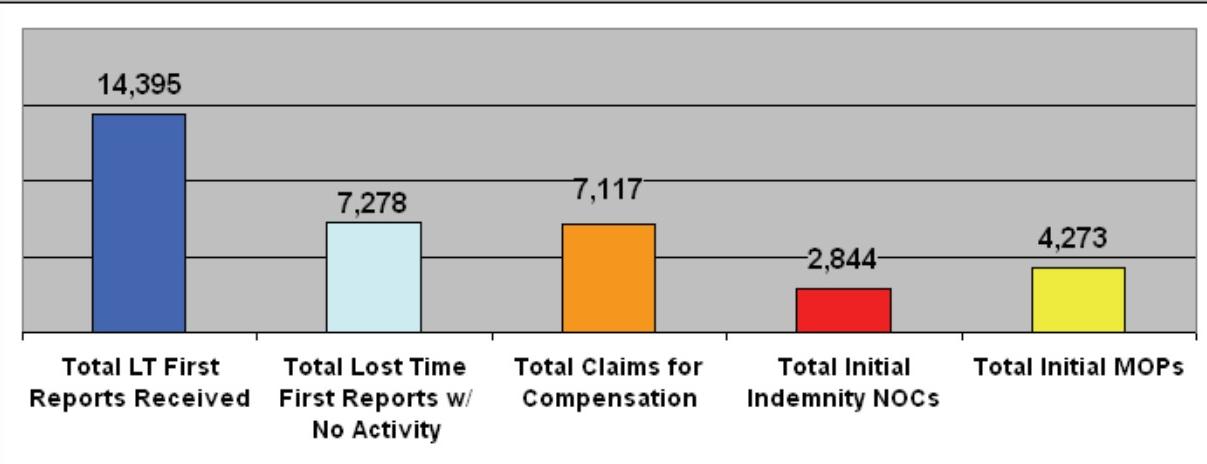
Chart 15

### Late Filed Notices per Quarter



## UTILIZATION ANALYSIS

Chart 16



% Total LT First Reports Denied

Total Initial Indemnity NOCs/  
Total LT First Reports

2007	19.76%
*2006	20.30%
2005	20.15%
2004	20.53%

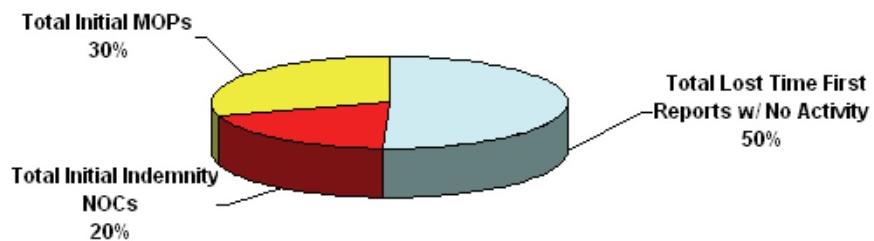
% Total Claims for Compensation Denied

Total Initial Indemnity NOCs/  
Total Claims for Compensation

2007	39.96%
*2006	40.04%
2005	39.28%
2004	41.49%

Chart 17

### Initial Activity Analysis - All Lost Time First Reports



The Monitoring Division has been producing this analysis since 2004. In each year the percentage of lost time First Reports of Occupational Injury or Disease that have turned into claims for compensation has remained stable, near the 50% mark.

The percentage of Lost Time First Reports denied continues to decline when the transitional data (migration from manual to EDI filing of NOCs) from 2006 is removed from the analysis.

\*MWCB mandated filing of NOCs by EDI on 7/1/2006.

## **II. AUDIT**

The Board conducts compliance audits of insurers, self-insurers and third-party administrators to ensure that all obligations under the Workers' Compensation Act are met. The functions of the audit program include, but are not limited to: ensuring that all reporting requirements of the Board are met, auditing the timeliness of benefit payments, auditing the accuracy of indemnity payments, evaluating claims-handling techniques, and determining whether claims are unreasonably contested.

### **A. Compliance Audits**

Since implementing the program, one hundred twenty-four (124) audit reports have been issued. In addition to the amounts paid to employees, dependents and service providers for compensation, interest, or other unpaid obligations, \$1,117,078 in penalties has been paid since 1999 (see Table 1). Audit reports and the corresponding consent decrees are available on the Board's website: [www.maine.gov/wcb/](http://www.maine.gov/wcb/)

In 2003, the Board successfully prosecuted Hanover Insurance Company for engaging in a pattern of questionable claims-handling techniques under §359(2) of the Workers' Compensation Act (see Section 12). Additionally, American International Group, Arch Insurance Group, Atlantic Mutual Insurance Company, Berkley Administrators of Connecticut, Cambridge Integrated Services Group, Claimetrics Management, Claims Management (Wal-Mart), CMI Octagon, CNA Insurance Group, Crawford & Company, ESIS, Future Comp/TD Banknorth Insurance Agency, GAB Robins, Gallagher Bassett Services, Gates McDonald, Georgia Pacific, Harleysville Insurance, Hartford Insurance, Meadowbrook, MEMIC, NGM Insurance Company, Old Republic Insurance Company, Royal & SunAlliance Group, Sedgwick Claims Management Services, Specialty Risk Services, The St. Paul Companies, Virginia Surety, and Zurich North America have all signed consent decrees for engaging in a pattern of questionable claims-handling techniques under §359(2). The Board filed Certificates of Findings pursuant to this section with the Maine Bureau of Insurance for further action.

### **B. Complaints for Audit**

The audit program also has a Complaint for Audit form and procedure that allow a complainant to request that the Board investigate a claim to determine if an audit under §359 and/or §360(2) is warranted. Since the form was implemented, two hundred sixty-five (265) complaints have been received. As a result of these investigations, over \$250,000 in unpaid obligations and over \$150,000 in penalties have been paid (see Table 2).

**Table 1**  
**Completed Audits**

<b>DATE</b>	<b>205(3)</b>	<b>205(4)</b>	<b>324(2) EE</b>	<b>324(2) State</b>	<b>359(2)</b>	<b>360(1)</b>	<b>360(2)</b>	<b>Total</b>
1999	22,550	0	0	0	0	32,200	0	54,750
2000	20,750	0	1,000	2,100	8,000	16,100	0	47,950
2001	7,750	0	0	0	0	5,500	0	13,250
2002	10,350	0	1,150	1,725	0	16,725	0	29,950
2003	13,950	0	0	0	10,000	24,150	0	48,100
2004	10,350	0	100	300	29,500	16,375	0	56,625
2005	74,400	0	54,900	7,800	60,000	47,950	20,000	265,050
2006	68,450	0	52,953	8,400	50,000	68,625	10,000	258,428
2007	87,550	850	61,550	21,900	37,000	53,225	2,000	264,075
2008	33,250	1,500	3,875	0	21,500	18,775	0	78,900
<b>Total</b>	<b>\$349,350</b>	<b>\$2,350</b>	<b>\$175,528</b>	<b>\$42,225</b>	<b>\$216,000</b>	<b>\$299,625</b>	<b>\$32,000</b>	<b>\$1,117,078</b>

**Table 2**  
**Complaints for Audit**

<b>Date</b>	<b>205(3)</b>	<b>205(4)</b>	<b>324(2) EE</b>	<b>324(2) State</b>	<b>360(1)</b>	<b>360(2)</b>	<b>Total Penalties</b>	<b>Unpaid Obligations</b>
1999	0	0	0	0	0	0	0	0
2000	0	0	0	0	0	0	0	0
2001	0	0	0	0	0	0	0	0
2002	0	0	0	0	0	0	0	0
2003	0	0	0	0	0	0	0	0
2004	3,000	0	0	0	0	0	3,000	85,739
2005	9,000	4,000	31,050	57,300	300	0	101,650	62,303
2006	4,700	0	25,600	3,150	0	0	33,450	52,278
2007	4,700	0	2,050	0	0	0	6,750	25,689
2008	7,500	0	0	0	0	0	7,500	25,891
<b>Total</b>	<b>\$28,900.00</b>	<b>\$4,000.00</b>	<b>\$58,700.00</b>	<b>\$60,450.00</b>	<b>\$300.00</b>	<b>\$0.00</b>	<b>\$152,350.00</b>	<b>\$251,899.39</b>

### III. ENFORCEMENT

The Board's Abuse Investigation Unit handles enforcement of the Workers' Compensation Act. The report of the Abuse Investigation Unit appears at Section 12 of the Board's Annual Report.

## **5. WORKER ADVOCATE PROGRAM**

### **I. INTRODUCTION.**

The Worker Advocate Program provides legal representation to injured workers in administrative proceedings (mediations and formal hearings) before the Workers' Compensation Board. In order for a worker to qualify to receive assistance, the worker's injury must have occurred on or after January 1, 1993; the worker must have participated in the Board's troubleshooter program; the worker must not have informally resolved the dispute; and finally, the worker must demonstrate that they have not retained legal counsel.

Traditional legal representation is the core of the program, the Advocate staff have broad responsibilities to injured workers, which include: attending hearings and mediations; conducting negotiations; acting as an information resource; advocating for and assisting workers to obtain rehabilitation, return to work and employment securing services; and communicating with insurers, employers and health care providers on behalf of the injured worker.

### **II. HISTORY.**

In 1992 the Maine legislature re-wrote the Workers' Compensation Act. They repealed Title 39 and enacted Title 39-A. One of the most significant changes which impacted injured workers was the elimination of the "prevail" standard. Under "old" Title 39, attorneys who represented injured workers were entitled to Board ordered fees from employers/insurers if they obtained a benefit for their client, i.e., if they "prevailed". However, under the "new" act (beginning in January of 1993), the employer/insurer had no liability for legal fees regardless of whether the worker prevailed or not, and, in addition, fees paid by injured workers to their attorneys were limited to a maximum of 30% of accrued benefits and settlement fees no greater than 10%.

These changes, which undoubtedly reduced the cost of claims, made it very difficult for injured workers to obtain legal representation, unless they had a serious injury with a substantial amount of accrued benefits at stake. Estimates indicate that upwards of 40% of injured workers did not have legal representation after these changes were made to the statute. This presented some dramatic challenges for the administration of the workers' compensation system. By 1995, recognition of these issues prompted the Workers' Compensation Board of Directors to establish a pilot "Worker Advocate" program.

The pilot program was staffed by one non-attorney Advocate and was limited to the representation of injured workers at the mediation stage of dispute resolution. Based on its initial success, the board expanded the pilot program to five non-attorney Advocates, one for each regional office; however, representation remained limited to mediations. Ultimately, in recognition of both the difficulties facing unrepresented workers and the success of the pilot program, the Legislature amended Title 39-A to formally create the Worker Advocate Program in 1997.

The new statute created a substantial expansion of the existing operations. Most significantly, the new program required Advocates to provide representation at formal hearings in addition to mediations. The additional responsibilities associated with this new representation require much greater skill and many more tasks than previously required of Advocates. Some of these new tasks include: participation in depositions, attendance at hearings, drafting required joint scheduling memorandums, drafting numerous types of motions, drafting complicated post-hearing memorandums, comprehending complex medical reports, conducting settlement negotiations, and analysis and utilization of statutory and case law.

### **III. THE CURRENT WORKER ADVOCATE PROGRAM.**

Currently the Board has 12 Advocates working in five regional offices from Caribou to Portland. Advocates are generally required to represent all qualified employees who apply to the program, unlike private attorneys. The statute does provide some exceptions to this requirement of representation whereby the program may decline to provide assistance. However, the reality is that relatively few cases are refused.

Cases are referred to the Advocate Program only when there is a dispute—as indicated by the employee, employer, insurer, or a health care provider. When the Board is notified of a dispute, a Claims Resolution Specialist (known as a “troubleshooter”) tries to facilitate a voluntary resolution of the problem. If that is not successful, the Board determines if the employee qualifies for the assistance of the Advocate Program, and if so, makes the referral.

If troubleshooting is not successful, cases are scheduled for Mediation. To represent an injured worker at Mediation, the Advocate Program must first obtain medical records and factual information regarding the injury and the worker’s employment. Advocates must meet with the injured worker to learn of and review the issues; they must also acquire information from health care providers. Advocates are also often called upon to explain the legal process (including Board rules and the statute) to injured workers. They often must explain requirements regarding medical treatment and work and frequently must assist workers with unemployment and health insurance issues. They also provide injured workers with other forms of interim support, as needed. Many of these steps produce evidence and information necessary for subsequent formal litigation, if the case gets that far.

At Mediation, the parties meet with a Mediator, discuss the issues, and attempt to negotiate an agreement. The Mediator facilitates, but has no authority to require the parties to reach an agreement or to set the terms of an agreement. If the parties resolve their issues, the terms of the agreement are recorded in a binding Mediation Record. A significant number of cases are resolved before, at, and after Mediation; of every 100 disputes reported to the Board, only about 25 go on to a formal hearing.

Cases that do not resolve at mediation typically do so because of the factual and/or legal complexity of the dispute. These cases typically involve situations where facts are unclear or as the result of differing interpretations of the statute and case law. If voluntary resolution of issues fails at mediation, the next step is litigation at the formal hearing level.

This formal process is initiated by an Advocate filing petitions to request a formal hearing (after assuring there is adequate medical and other evidence to support a claim). Before a hearing is conducted, the parties exchange relevant information through voluntary requests and formal discovery. Preparation for hearing entails preparation of and response to motions, preparation of the worker and other witnesses for their testimony, preparation of exhibits, analysis of applicable law and analysis of medical and other evidence. At the hearing, Advocates must elicit direct and cross examination testimony of the witnesses, introduce exhibits, make objections and motions, and, at the conclusion of the evidence taking, file position papers which summarize the facts and credibly argue the law in the way most favorable to the injured worker. Along the way, the Advocates also often attend depositions of medical providers, private investigators, and labor market experts. Eventually, either a decision is issued or the parties agree on either a voluntary resolution of the issues or a lump sum settlement. The average timeframe for the entire process is about 10 months, although it can be significantly shorter or longer depending on the complexity of medical evidence and the need for independent medical examinations.

#### **IV. CASELOAD STATISTICS.**

Injured workers in Maine have made substantial utilization of the Advocate program. Advocates represent injured workers at approximately 50% of all mediations. This percentage has been relatively consistent since 1999. Given the relatively large number of Mediations handled by Advocates, it bears noting that from 1999 through 2008, the program consistently cleared no less than 95% of the cases assigned in a given year for Mediation. The following table reflects the number of cases at Mediation from 1999 through 2008.

Advocate Cases at Mediation				
	Assigned	Cases Disposed	Pending Dec 31st	% of All Pending
1999	2,342	2,351	299	51%
2000	1,903	1,856	346	52%
2001	2,249	2,247	348	51%
2002	2,113	2,153	308	51%
2003	1,981	1,899	390	46%
2004	1,816	1,969	237	50%
2005	1,915	1,841	311	53%
2006	1,522	1,533	280	56%
2007	1,397	1,434	243	52%
2008	1,405	1,437	211	48%

These numbers demonstrate a slight increase in the number of cases assigned to, and disposed of by, Advocates in 2008 over those assigned to, and disposed of by, Advocates in 2007.

The Advocate program has also represented injured workers at 25 to 30% of all formal hearings before the Board (about 700 cases per year). In the majority of years, Advocates have cleared more formal cases than were pending at the start of the year. Given the much greater scope of responsibility inherent with formal hearing cases, Advocates have performed very well in their

expanded role. The following table represents the number of cases handled by Advocates to formal hearing in years 1999 through 2008.

Advocate Cases at Formal Hearings				
	Assigned	Disposed	Pending 12/31	% of All Pending
1999	605	645	310	28%
2000	597	594	313	28%
2001	813	784	342	28%
2002	642	682	468	35%
2003	920	780	608	37%
2004	689	810	487	29%
2005	679	714	452	30%
2006	628	715	361	29%
2007	632	673	320	28%
2008	599	610	309	29%

These numbers demonstrate a slight downturn in the number of cases handled by Advocates to formal hearing in 2008, as compared to the number of cases handled by Advocates to formal hearing in 2007.

## V. SUMMARY.

The Advocate Program was created to meet a significant need in the administration of the Workers' Compensation system. The statutory expansion of program duties in 1997 created unmet needs in the program. In order to meet the obligations in the statute, the Workers' Compensation Board has diverted resources from other work to the Advocate program. Currently the program has 12 Advocates with a support staff of 16 (two of which are part-time) and a supervising Senior Staff Attorney. Services are provided in 5 offices; Caribou, Bangor, Augusta, Lewiston and Portland.

In its first 10 years, the Program has proven its value by providing much-needed assistance to Maine's injured workers, albeit with limited resources. As a result of the limited resources, the Advocate program has experienced periods of overly high case loads which has led to chronic staff turnover. In one 12-month period, (2006–2007) 42% of existing Advocate Program positions were vacant. Nothing has greater potential to impact the quality of the services rendered to injured workers than insufficient staff. In response to ongoing concerns, the 123<sup>rd</sup> Legislature provided additional support for the Advocate program. Qualifications for Advocates and paralegals were increased and, in conjunction, pay ranges were upgraded. [Public Law 2007 Ch 312]. The changes, which went into effect in September 2007, are intended to attract and retain staff and to bolster stability of this program, which is an integral part of the Workers' Compensation system in Maine. Despite these substantial improvements, significant needs for additional support staff remain.

## **6. INDEPENDENT MEDICAL EXAMINATIONS (IMEs); MEDICAL FEE SCHEDULE; FACILITY FEE SCHEDULE**

### **I. INDEPENDENT MEDICAL EXAMINATIONS.**

Draft regulations for the implementation of Section 312 of the Workers' Compensation Act of 1992 were first presented to the Board of Directors April 7, 1994, with final approval on January 3, 1996. Section 312 provides, in part, as follows:

**Examiner system.** The board shall develop and implement an independent medical examiner system consistent with the requirements of this section. As part of this system, the board shall, in the exercise of its discretion, create, maintain and periodically validate a list of not more than 50 health care providers that it finds to be the most qualified and to be highly experienced and competent in their specific fields of expertise and in the treatment of work-related injuries to serve as independent medical examiners from each of the health care specialties that the board finds most commonly used by injured employees. The board shall establish a fee schedule for services rendered by independent medical examiners and adopt any rules considered necessary to effectuate the purposes of this section.

**Duties.** An independent medical examiner shall render medical findings on the medical condition of an employee and related issues as specified under this section. The independent medical examiner in a case may not be the employee's treating health care provider and may not have treated the employee with respect to the injury for which the claim is being made or the benefits are being paid. Nothing in this subsection precludes the selection of a provider authorized to receive reimbursement under section 206 to serve in the capacity of an independent medical examiner. Unless agreed upon by the parties, a physician who has examined an employee at the request of an insurance company, employer or employee in accordance with section 207 during the previous 52 weeks is not eligible to serve as an independent medical examiner.

**Appointment.** If the parties to a dispute cannot agree on an independent medical examiner of their own choosing, the board shall assign an independent medical examiner from the list of qualified examiners to render medical findings in any dispute relating to the medical condition of a claimant, including but not limited to disputes that involve the employee's medical condition, improvement or treatment, degree of impairment or ability to return to work.

**Rules.** The board may adopt rules pertaining to the procedures before the independent medical examiner, including the parties' ability to propound questions relating to the medical condition of the employee to be submitted to the independent medical examiner. The parties shall submit any medical records or other pertinent information to the independent medical examiner. In addition to the review of records and information submitted by the parties, the independent medical examiner may examine the employee as often as the examiner determines necessary to render medical findings on the questions propounded by the parties.

**Medical findings; fees.** The independent medical examiner shall submit a written report to the board, the employer and the employee stating the examiner's medical findings on the issues raised by that case and providing a description of findings sufficient to explain the basis of those findings. It is presumed that the employer and employee received the report 3 working days after mailing. The fee for the examination and report must be paid by the employer.

**Weight.** The board shall adopt the medical findings of the independent medical examiner unless there is clear and convincing evidence to the contrary in the record that does not support the medical findings. Contrary evidence does not include medical evidence not considered by the independent medical examiner. The board shall state in writing the reasons for not accepting the medical findings of the independent medical examiner.

**Annual review.** The board shall create a review process to oversee on an annual basis the quality of performance and the timeliness of the submission of medical findings by the independent medical examiners.

Currently, the Board has 16 examiners on its Section 312 IME list. The Board continues to consider alternatives to increase the number of examiners on the list and decrease the amount of delay. The following physicians are currently on the Board's Section 312 IME list:

#### PAIN MANAGEMENT SPECIALISTS

Leong, Peter Y  
Mercy Hospital  
144 State Street  
Portland Me 04102

Lynch, Robert P., DC  
1200 Broadway  
S Portland, Me 04106

Vanderploeg, Douglas A., DC  
17 Back Meadow Rd  
Damariscotta, Me 04543

#### FAMILY & INTERNAL MEDICINE SPECIALISTS

Griffith, William L., MD  
Kennebec Medical Associates  
13 Railroad Square  
Waterville, Me 04901

Shaw, Peter K., MD  
96 Campus Drive  
Scarborough, Me 04102

**NEUROLOGY**

Bridgman, Peter, MD  
51 Harpswell Rd, Ste 100  
Brunswick, Me 04011

**ORTHOPEDIC**

Donovan, Matthew J., MD  
16 Long Sands Road  
York, Me 03909

Crothers Omar M.D.  
542 Cumberland Ave  
Portland, Me 04101

**OSTEOPATHIC**

Charkowick, Robert  
P.O. Box 3154  
Augusta, Me 04330

**OTOLARYNGOLOGY**

Haughwout, Peter J., MD  
7A Everett St  
Brunswick, Me 04011

**PHYSIATRY**

Bamberger, Stephan  
Medical Rehab Associates  
12 Industrial Parkway  
Brunswick, Me 04011

**PODIATRY**

Muca, Eric, D.P.M.  
Yarmouth Family Services  
259 Main Street  
Yarmouth, Me 04096

Jeffrey Barkin, MD  
92A Exchange Street  
Portland, ME 04101

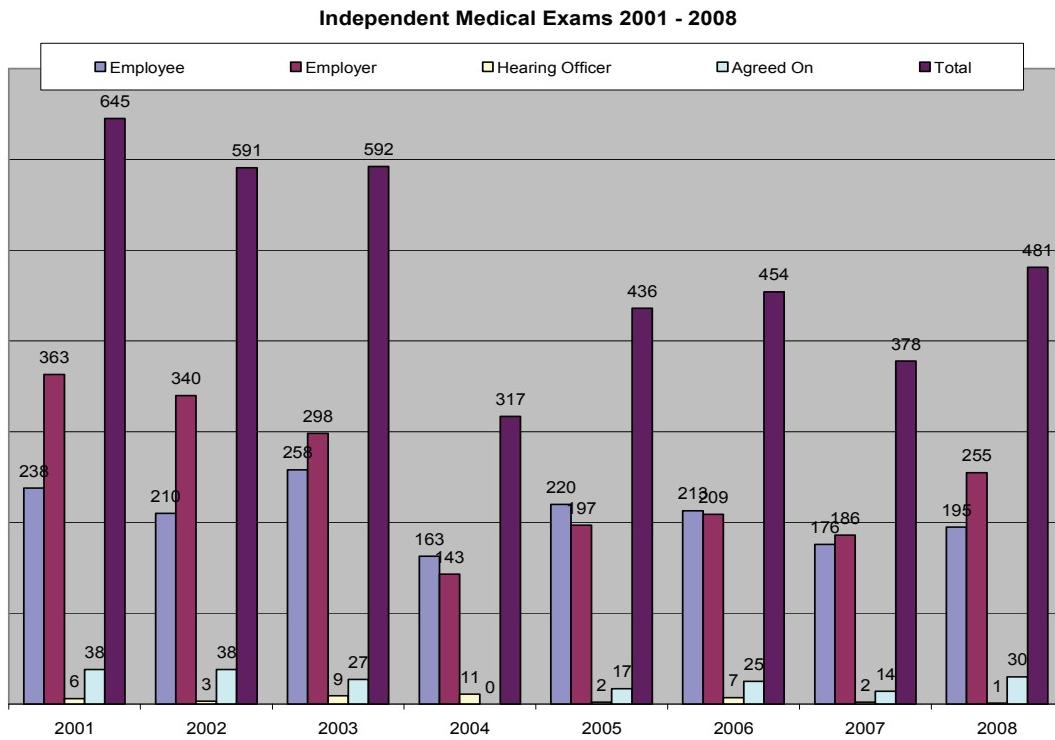
**PSYCHIATRY**

Lobozzo, David B., MD  
477 Congress St  
Portland, Me 04101

Matranga, Jeff, Ph.D.  
2 Big Sky Lane  
Waterville, Me 04901

## PULMONARY

Fuhrmann, Calvin P., MD  
 Kennebunk Medical Center  
 24 Portland Rd.  
 Kennebunk, Me 04043



The chart reflects the source of requests for independent medical examinations for the years 2001-2008.

## II. MEDICAL FEE SCHEDULE.

The Board first published a Medical Fee Schedule on April 4, 1994. The Board is required pursuant to Section 209 to adopt rules establishing standards, schedules, and scales of maximum charges for individual services, procedures and courses of treatment. In order to ensure appropriate costs for health care services, the standards are to be adjusted annually to reflect appropriate changes in levels of reimbursement.

In August 1997, the Board adopted the Resource Based Relative Value System (RBRVS) as an efficient method to administer a fee schedule. On August 22, 2006, the Board voted to adopt the 2005 CPT Codes and RBRVS.

### **III. FACILITY FEE SCHEDULE.**

In 2007, Maine WCB contracted with Ingenix to facilitate the creation of a facility fee rule for hospital inpatient, outpatient and ambulatory surgical care. After four meetings of the consensus-based rulemaking group, they were able to agree on a modified Medicare methodology because it is relatively transparent and widely understood, but they were unable to agree on several issues, including the base rate. The Board will consider whether to go to public hearing with a rule in January 2009.

The goal of the facility fee schedule is to:

- reduce inequities in the system;
- eliminate bottlenecks and inefficiencies;
- ensure providers are paid fairly;
- create a system that payers can manage while producing the lowest rational cost system wide; and
- create clarity in rules and simplicity for maintenance.

The Board anticipates that the rule, as drafted, will generate savings with respect to these medical costs. A safety net is built in to have Ingenix analyze the facility fee rule one year after implementation to identify savings or correct any negative impact.

## **7. TECHNOLOGY**

The Board over the past year has implemented a number of significant changes with respect to information systems and their delivery. Due to recent legislation, many of the information delivery platforms and application were centralized into the Office of Information Technology. Over this past year the Board has completed the migration of its applications on Board servers to a centralized enterprise system. This transition required changes to our Agency Business application as well as merging the Advocate client tracking system. These two tasks alone required significant time and expense to migrate to the OIT enterprise server. Additionally, all the desktops were replaced because they were over 5 years old and beginning to experience system degradation and malfunctions. Network speed due to all the centralization seems to have a serious impact on our Portland, Augusta Regional, and Caribou offices.

The WCB, in cooperation with NCCI, implemented electronic submission for Proof of Coverage from the insurer community. The community has been asking for this electronic submission which will provide more accurate and timely filings. This will also enable the Claim staff to better supervise the timeliness and accuracy of payments to injured employees. The Board also convened a consensus based rulemaking group to develop a rule requiring the electronic filing of proof of workers' compensation coverage.

The Board has been using a tool called ISYS (word search application for Hearing Officers) which provide the ability to search by key word other Hearing Officer decisions, Board Statute, Board Rules, and other pertinent documents. This functionality has been expanded over the past year to other Board employees, including Advocates. The Board, at the request of the legal community, has partnered with Westlaw to provide access for the legal community to perform word search capabilities of Hearing Officer decisions.

## **8. BUDGET AND ASSESSMENT**

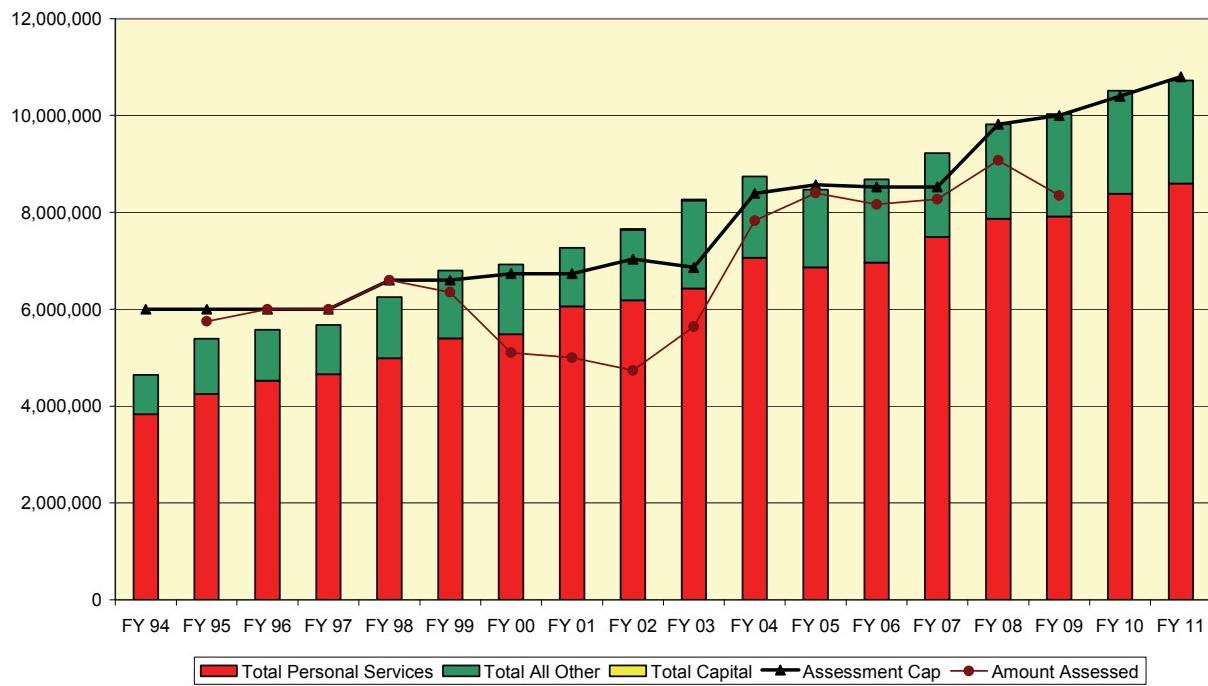
The Board is funded pursuant to a statutory assessment paid by Maine's employers, both self-insured and insureds. The Legislature in creating this funding mechanism in 1992 intended the users of the workers' compensation system to pay for it. The agency had previously been funded from General Fund appropriations.

The Legislature established the assessment as a revenue source to fund the Board, but capped the assessment limiting the amount of revenue which can be assessed. A long term solution to this problem is being considered in order to deal with costs, beyond the Board's control, such as contract increases, health insurance, retirement, postage, and lease costs.

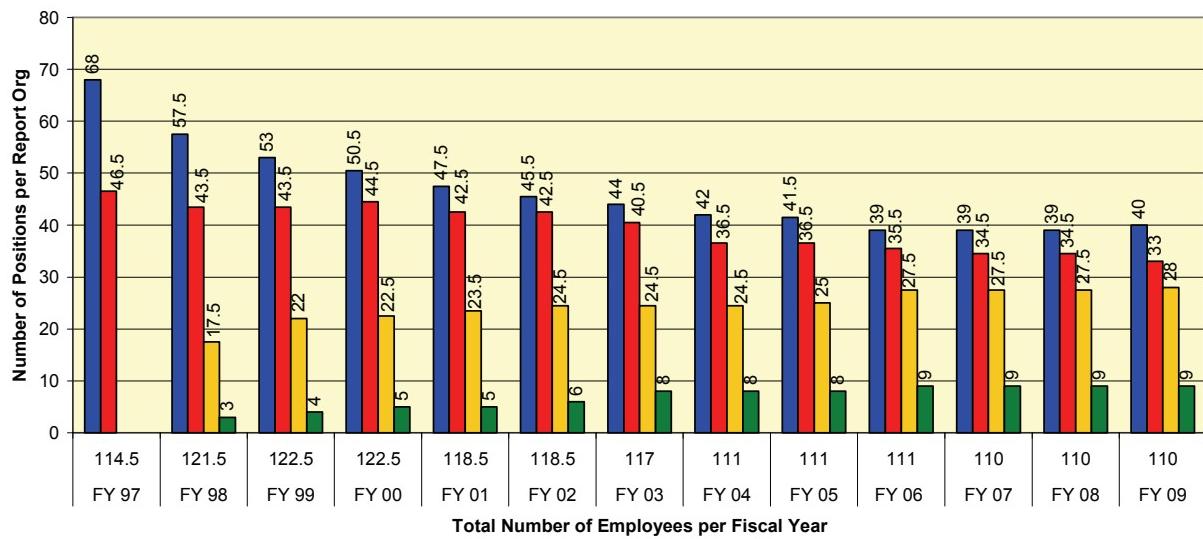
The assessment cap has been problematic in submitting a balanced budget. The Board cannot budget more than it can raise for revenue from the annual assessment and other minor revenues collected from the sale of copies of documents, fines and penalties. A majority of the fines and penalties received are deposited in the General Fund which contributes no support to the Board. The Legislature voted to raise the assessment cap beginning in FY08. This legislation increased the maximum assessment to \$9,820,178 in fiscal year 2008, \$10,000,000 beginning in fiscal year 2009, \$10,400,000 beginning in fiscal year 2010, \$10,800,000 beginning in fiscal year 2011, and \$11,200,000 beginning in fiscal year 2012. These increases in the Board's assessment cap should assist in submitting a budget that is balanced between expenditures and revenues for the next biennium. The total Board-approved budget for this biennium totaled \$10,446,994 in FY 10 and \$10,681,089 in FY11.

P.L. 2003, C. 93 provides that the Board, by a majority vote of its membership, may use its reserve to assist in funding its Personal Services and All Other expenditures, along with other reasonable costs incurred to administer the Workers' Compensation Act. The Bureau of the Budget and Governor approve the request via the financial order process. This provides greater discretion to the Board in the use of its reserve account. The bar chart entitled "WCB – 18 Year Schedule of Actual and Projected Expenditures" shows actual expenditures through FY08 and projected expenditures for FY09. It also shows the assessment cap and the amounts actually assessed through FY09. The bar chart entitled "WCB – Personnel Changes Since FY97" demonstrates the Board's efficient use of personnel since 1997.

**WCB - 18 Year Schedule of Actual and Projected Expenditures**  
**Workers' Compensation Administrative Fund - 0183**  
**October 2008**



**WCB - Personnel Changes Since FY 97**  
**October 2008**



The MAE and Worker Advocate programs represent 33% of the agency's total number of employees.

[■ Dispute Resolution ■ Central Services ■ Advocate Program ■ MAE Program]

As part of the FY 08-09 budget process, the Legislature requested that the Workers' Compensation Board oversee an audit of the agency's finances. At the conclusion of the RFP and interview process, the Board hired the accounting firm of Blake Hurley McCallum & Conley to conduct this audit. The firm was asked to review all aspects of the Board's assessment process and financial practices for the fiscal years beginning in July 1, 1997 and ending July 1, 2007. The firm found the Board staff to be "organized, diligent and dedicated in the manner they carried out the mission of the Workers' Compensation Board" and presented a clean bill of health for the Board's fiscal operations for the 10 year period.

The Board has taken the following steps to comply with the Blake Hurley recommendations to improve the efficiency of the Board's finances: 1) the Board is currently in the process of moving all assessment data from Excel spreadsheets to the Board's computer software program Progress; 2) the Board has implemented steps to ensure segregation of duties relative to assessment collections; and 3) the Board has established a separate account for the agency's reserves. Blake Hurley further recommended that if the present assessment process is retained, that the Board should institute an audit function on insurers and self-insureds to improve compliance with the assessment statute. This recommendation has not yet been implemented. Another consideration was to legislatively change the "assessment statute to require insurance companies to pay assessments on the same basis as the self-insureds" (cash basis in lieu of a rate basis). The change would simplify the process and reduce administrative costs, but would be very cumbersome for the insurance companies to implement.

## **9. CLAIMS MANAGEMENT UNIT**

The Claims Management Unit operates under a “case management” system. Individual claims managers process the file from start to finish. The insurance carriers, claims administrators, and self-insured employers benefit from having a single contact in the Claims Management Unit.

The Unit coordinates with the Monitoring Unit of the MAE Program to identify carriers that frequently file late forms or who may be consistently late in making required payments to injured workers. Case managers of the Claims Management Unit review the paperwork filed by carriers to ensure that payments to injured workers are accurate and that the proper forms are completed and filed with the Workers’ Compensation Board. The Unit conducts training workshops regarding compliance and payments to injured workers upon request.

Greater implementation of Electronic Data Interchange (EDI) has created efficiencies in claims management, allowing managers to increase their claim management efforts, through the electronic filing of the First Report of Injury and Notice of Controversy.

In addition to EDI creating data entry efficiencies, the Unit is also undergoing full business analysis of its overall daily functions. The purpose is to upgrade computer programs and screens in order to streamline the workload, thereby making the daily performance of work more efficient; automate functions that can be done by the computer; and, reduce the time it takes to process claims and associated paperwork. All of these changes will provide time to address higher level and more serious problems and should benefit the entire workers’ compensation community. It will also identify, through the computer, filing requirements and deadlines for carriers while notifying them automatically of problems or errors in this regard.

Claims staff search the database for a claim that matches the information on each form that is received, checking by Social Security Number, employee name and date of injury. This is information that is entered into the database after the Employer’s First Report of Occupational Injury or Disease is filed with the Board. Claims Management Unit staff verify accuracy of payment information on each claim that is filed with the Workers’ Compensation Board for claims that have been open since 1966. Cost of Living Adjustments (COLA) are done on claims beginning with dates of injury on January 1, 1972 through December 31, 1992. Claims staff check to see that the COLAs are calculated correctly. The filing of forms with incorrect information causes Claims staff to spend a lot of time researching files and doing mathematical calculations, but it is necessary to ensure that correct payments are made to injured workers.

This Unit is responsible for annually producing the “State Average Weekly Notice” that contains the information necessary to make COLAs on claims, to calculate permanent impairment payments, and whether or not to include fringe benefits when calculating compensation rates. The SAWW is determined by the Department of Labor each year. Claims staff use this information to do the mathematical calculations to determine the COLA multiplier and maximum benefit in effect for the following year.

Work is done by Claims staff to produce a Weekly Benefit Table each year. The Weekly Benefit Table is used by all members of the Workers' Compensation community who need to determine a compensation rate for an employee.

A brief description of the way various forms are processed is shown below:

**Petitions** – The file for the claim is located or created, the form is entered in the database, and the file is sent to the appropriate Claims Resolution Specialist in a regional office. A telephone call or e-mail message is directed to the person who filed the form if a claim cannot be found in the database. They are asked to provide an Employer's First Report of Occupational Injury or Disease so that a claim can be started.

**Notices of Controversy** - The initial form is filed electronically. Corrections to the form are submitted to the Board on paper forms and the changes are entered manually by Claims staff.

**Answers to Petitions** - The file for the claim is located, the Answer is entered into the database, and the Answer is sent to the file.

**Wage Statements** - The average weekly wage is calculated by Claims staff in accordance with direction given by Statute, Board Rules and Law Court decisions. The average weekly wage is entered into the database and the form is sent to the File Room.

**Schedule of Dependent(s) and Filing Status Statements** - The information on this form is entered into the database and the form is sent to the File Room.

**Memorandum of Payment, Discontinuance or Modification of Compensation, Consent between Employer and Employee** - The form is checked for accuracy, comparing dates, the rate, and the wage to information previously filed. The form is entered into the database and then sent to the File Room. A telephone call or e-mail message is directed to the person who filed the form if there is a problem. Explanations or amended forms are requested.

**21-Day Certificate or Reduction of Compensation** - The form is checked for accuracy, comparing dates, the rate, and the wage. The form is entered in the database if everything is correct. In cases where it is determined by Claims staff that there has been an illegal suspension or reduction, the file and form are sent to a Claims Resolution Specialist in a regional office.

**Lump Sum Settlement** – The information on this form is entered into the database and the form is sent to the File Room.

**Statement of Compensation Paid** – The information on this form is compared to information previously reported, the form is entered into the database, and the form is sent to the File Room. A large number of these forms are found to have errors and which results in staff having to research the file and contact the person who filed the form, requesting corrected or missing forms.

The Claims Management Unit processes all of the following forms:

Filed between Jan. 1  
And Oct. 31, 2008

Employer's First Report of Occupational Injury or Disease	33,954 electronic filing 118 paper filing
Notice of Controversy	8,673 electronic filing 24 paper filing
Petitions	3,539
Answers to Petitions	1,405
Wage Statement	7,730
Schedule of Dependent(s) and Filing Status Statement	7,985
All Payment Forms, including:	5,468
Memorandum of Payment	
Discontinuance or Modification of Compensation	
Consent Between Employer and Employee	
21-Day Certificate of Discontinuance or Reduction of Comp	
Lump Sum Settlement	
Statement of Compensation Paid	13,139

Currently the only forms listed above that can be filed electronically, are the Employer's First Report of Occupational Injury or Disease and the Notice of Controversy. All other forms are filed on paper and must be entered manually. Corrections to the Notice of Controversy cannot be made electronically and must be submitted on paper.

## **10. INSURANCE COVERAGE UNIT**

The Insurance Coverage Unit has new computer screens resulting from recent program upgrades. The new screens help to streamline data entry and enhance the ability to identify trends and problems with carriers. The program can link coverage and do employer updates more easily than in the past. This has resulted in a reduction of First Reports that can't be matched to an insurer. In the early 1990s, the Board would receive approximately 600 First Reports in which coverage could not be identified. In 2005 this figure had been reduced to 16, and in 2006 to 14. As a direct result of the computer upgrade and streamlining the workload in 2008 the Coverage Unit staff was reduced by four employees.

The Board's database was merged with the Department of Labor's roughly six years ago, resulting in greater collaboration with the Department of Labor and the Bureau of Insurance. The Unit processes proof of workers' compensation insurance coverage both manually and electronically. A staff member is assigned for processing applications for waivers to the Workers' Compensation Act.

The Unit supervisor is responsible for a multitude of duties including the approval of applications for predetermination of independent contractor status. The functions of the Unit consist of proof of coverage, waivers, and predeterminations. The goal of staff is to process 80% of the proof of coverage filings within 24 hours of receipt (the Board received and processed 45,641 proof of coverage filings between November 2007 and October 2008); 90% of waiver applications within 48 hours of receipt (the Board received and processed 1,652 waiver applications between November 2007 and October 2008); and 100% of predetermination applications within 14 days (the Board received 5,581 applications between November 2007 and October 2008). ALL GOALS WERE MET IN 2008.

The Unit assists with problem claims including the identification of insurance coverage, the identification of employers, and identifying address changes for employers. This is done to properly process and assign claim files to the appropriate regional offices. The Coverage staff works closely with the Abuse Investigation Unit regarding problems associated with coverage enforcement. The Unit cooperates with the MAE program to identify carriers and self-insureds who consistently fail to file required information in a timely manner. And, it assists the Bureau of Labor Standards to maintain an accurate and up-to-date employer database, utilized by both departments.

The Unit researches the history of employer insurance coverage in order to certify the accuracy of these records. This is particularly important for many of the claims at formal hearing, especially where there is a controversy as to the liability for the payment of the claim. Since workers' compensation coverage in Maine is mandatory, the Unit routinely provides assistance to the public regarding insurance coverage requirements.

## **11-A. COORDINATION WITH OTHER AGENCIES**

The Board has been successful in its effort to coordinate its work with other state and federal agencies.

An example of this success is the Board's migration of its employer database to the Department of Labor's (DOL) database. For years, in its effort to identify employers that were operating without required workers' compensation coverage, the Board compared its coverage information to DOL's unemployment database. A great deal of unnecessary paperwork for the Board and for Maine's employers was generated due to the inconsistencies between the two databases.

Information that was updated on one system, for example, would not always be updated on the other system. Now, with the two databases combined, the Board can more accurately identify employers without coverage. Efforts are currently underway to coordinate other DOL employer databases into one.

The Board also collects a significant amount of data on its forms to assist the Bureau of Labor Standards (BLS) in its task of producing statistical reports. An example of the Board's responsiveness in this area involves a form titled "Statement of Compensation Paid." At the request of BLS, for more detailed information, the Board accommodated the requested changes.

The same holds true for the Occupational Safety and Health Administration (OSHA). Maine is currently one of the few states in the nation that captures OSHA required data on its First Report of Injury form. Therefore, Maine's employers, in the event of an accident in the workplace, only have to complete one form to meet both state and federal requirements. This has substantially reduced the paperwork burden on Maine's employers.

The Board works with the Bureau of Insurance (BOI) with respect to its annual assessment. BOI provides information on premiums written, predictions on market trends, and paid losses information for self-insured employers. The Board uses this information when it calculates the annual assessment. The Monitoring, Auditing, and Enforcement (MAE) Unit works directly with BOI on compliance and enforcement cases pursuant to 39-A M.R.S.A. § 359(2). The WCB certifies and forwards to BOI cases which involve questionable claims handling techniques or repeated unreasonable contested claims for appropriate action by BOI.

There are requests from the Bureau of Labor Standards for data and additional elements. Some fundamental changes were made in the area of data responsibility. And, programming changes will be made to give BLS the ability and authority to modify specific information with regard to the physical location of the employer where an injury has occurred. The Occupational Safety and Health Data Collection and Injury Prevention Group was formed in response to P.L. 2003 Ch. 471 to review various data collection and injury prevention efforts and to make recommendations to the Labor Committee. The Bureau of Labor Standards has coordinated this effort with assistance from the Workers' Compensation Board.

A coordinated effort is underway with Bureau of Information Services to upgrade the WCB's computer hardware and software. Upgrades include desktops, network servers, database server, network hubs, and a routed network. Major programming changes are underway and will continue into the foreseeable future.

The Board works with the Department of Health and Human Services (DHHS) to assist DHHS in recovering past due child support payments and to ensure that MaineCare is not paying for medical services that should be covered by workers' compensation insurance.

Pursuant to P.L. 2007 Ch. 311, the Board works with MaineCare to insure it receives appropriate reimbursement and notifies the Department of Health and Human Services within 10 days of an approved agreement or an order to pay compensation.

The Executive Branch, Department of Labor, Bureau of Labor Standards, and the Workers' Compensation Board are involved in a coordinated effort to reduce the misclassification of employees.

## **11-B. ALTERNATIVE DELIVERY SYSTEMS INCLUDING PRIVATIZATION**

The 121st Maine Legislature enacted legislation that required the Workers Compensation Board (WCB) to adopt rules mandating electronic filing. The legislation directed the Board to proceed by way of consensus based rulemaking. A committee was formed consisting of representatives from the insurance companies, self insureds, WCB Directors and staff. Recommendations were forwarded to and unanimously approved by the Board of Directors.

The WCB agreed on a three-phase project. - First Reports of Injury and Denial submissions are currently being implemented as directed in the legislation. The WCB is currently engaged in completing the remaining payments phase. An internal group is near completion for the Trading Partner Tables which will provide a roadmap of the various payment functions and time frames required for each business event. The next step is to get shareholder review and comment before programming the necessary functions. The carriers require at least 12 months once the State's specifications are posted before they can initiate a test. Additionally, WCB Rules will be updated to take advantage of the new process. Testing is estimated to begin the Fall of '09.

The WCB has also implemented the capability for insurers to electronically submit Proof of Coverage (POC) filings for employers. The WCB Rule is being reviewed and updated to require mandatory submission of POC by the Summer of '09.

## 12. ABUSE INVESTIGATION UNIT

The Workers' Compensation Act authorizes the Abuse Investigation Unit (AIU) to "investigate all complaints of fraud, illegal or improper conduct or violation of the Act or rules of the board relating to workers' compensation insurance, benefits or programs, including ... acts by employers, employees or insurers" as directed by the board. 39-A M.R.S.A. §153 (5). The AIU investigates and assesses penalties under the following provisions of the Act.

- **Section 205(3):** lost time benefits must be paid within 30 days of becoming due when there is no ongoing dispute. Penalties of \$50 per day to a maximum of \$1,500 are payable to the injured worker.
- **Section 205(4):** medical bills are payable within 30 days of becoming due when there is no ongoing dispute. Penalties of \$50 per day up to a maximum of \$1,500 are payable to a health care provider or the injured worker.
- **Section 324(2):** payments pursuant to a board order or agreement of the parties must be made within 10 days. Violations of this section may be penalized up to \$200 per day with the first \$50 per day payable to the employee and any additional fine payable to the Board's Administrative Fund.
- **Section 360(1):** certain forms are mandatory and must be filed within time frames set by rule or statute. Penalties of \$100 per instance for failing to file, or filing late, are payable to the General Fund.

The AIU is also responsible for investigating complaints and/or recommending penalties under §324(3) (failure to secure mandatory workers' compensation coverage), §359(2) (questionable claims handling or repeatedly unreasonably contesting claims by insurers), and §360(2) (willful violations of the Act, fraud or intentional misrepresentations). If there is a basis for taking further action, the AIU refers the case to a presiding or hearing officer of the board for hearing and decision including imposition any penalties &/or fines.

- **Section 324(3):** Fines may be levied up to \$10,000.00 or an amount equal to 108% of the unpaid premiums, whichever is greater. Violators may also be subject to loss of corporate status, suspension of a state-issued license, and/or referral to the Attorney General for criminal prosecution. Penalties under this section are paid to the Board's Employment Rehabilitation Fund.
- **Section 356(2):** benefits due to death of an injured worker are payable to the state when there are no surviving dependents as defined by the Act. An amount equal to 100 times the state average weekly wage is payable. AIU investigates possible cases and negotiates with insurers or litigates claims for payment.
- **Section 359(2):** Penalties of up to \$25,000 may be assessed against any employer, insurer or third-party administrator found liable. Penalties under this section are payable to the General Fund. Any violations are certified to the Superintendent of Insurance, for further action.

- **Section 360(2):** Individuals may be fined up to \$1,000 and corporations, partnership or other legal entities up to \$10,000 for violations. Repayment of compensation received, or of compensation wrongfully withheld, may also be ordered. Penalties are payable to the General Fund.

In 2008, the AIU carried an open caseload of 4087 claims, including 1829 new filings made during the year. See Table 1. The number of new cases filed in 2008 represents a decrease of 25.8% in comparison to 2007 (2464 new cases filed). The majority of claims continue to occur in two categories: §324(3) for failure to carry workers' compensation insurance and §360(1) for failure to file or late filing of mandatory forms. In 2008, new cases in these two sections combined equal 99% of all new cases filed with the Unit. Following the trend for new filings as a whole, the number of new cases under these two sections also decreased from 2007 to 2008 – 28.7% for §324(3) and 17.9 % for §360(1).

**Table 1: Filings by Statutory Provision - 2008**

Statute Section	Open 1/1/2008	Filed	Closed	Pending 10/31/2008*
205(3)	22 ‡	3	5	20
205(4)	0	0	0	0
324(2)	93 ‡	9	41	61
324(3)	632	990	971	651
356(2)	8	0	8	0
360(1)	1488	815	398	1905
360(2)	15 ‡	12	8	19
<b>TOTALS</b>	<b>2258</b>	<b>1829</b>	<b>1431</b>	<b>2656</b>

\* At the time of preparation information was only available through this date.

‡ The number of open cases as of 1/1/2008 is less than reported previously due to a reconciliation.

In 2008 the dollar amount of fines assessed annually continued to track the relative distribution of cases by statutory provision; the majority of penalty dollars are assessed for cases under §§ 324(3) and 360(1). In 2008, \$524,174 in penalties were levied for failure to carry workers' compensation insurance as required by § 324(3), and \$34,225 was assessed for failure to file and late filings pursuant to §360(1).

Beginning in 2009, the AIU will implement use of off-the-shelf business software to track, invoice and manage penalty collections. In the last several years, the scope of penalty collections has expanded beyond the capacity of existing software. The volume has also stretched the personnel capacity of the AIU's legal staff. Use of off-the-shelf software will be an interim tool providing the AIU with greater management capability, including greatly improved invoicing capacity, while existing software is upgraded.

In 2008 the AIU continued to work in cooperation with the Attorney General's office regarding criminal prosecutions pursuant to two separate sections of the Act. The failure to carry mandatory workers' compensation coverage is a Class D crime in Maine. 39-A M.R.S.A.

§324(3)(A). Starting in 2005, the Attorney General's office has accepted a select group of cases annually for prosecution. To leverage limited prosecutorial resources, cases are identified using jointly developed criteria including the length of time a business operated without coverage and taking into consideration violators representative of a particular business or sector. The Attorney General has obtained indictments in all cases accepted to date; six (6) of the cases have resulted in convictions with jail time and/or penalties and restitution, and several cases remain pending. The Attorney General's office has also accepted several cases regarding violations of §360(2) of the Act regarding willful violations, fraud and intentional misrepresentation. The Act does not declare violations of this provision to be crimes however the implications and impacts are equally significant to the system. Indictments have been handed down in all of the cases to date and final disposition is pending.

## **13. GENERAL COUNSEL REPORT**

### **I. RULES.**

The Board adopted rules requiring the electronic filing of First Reports of Injury and Notices of Controversy. These rules were developed using the consensus-based rule-making process. The Board is in the process of developing a rule requiring the electronic filing of payment information.

The Board also convened a consensus based rulemaking group to develop a rule requiring the electronic filing of proof of workers' compensation insurance coverage.

During 2008, the Board reconvened a consensus based rulemaking group to look at hospital inpatient, outpatient and ambulatory surgical care centers facility fees. To aid this group, as well as the Board with this effort, the Board hired Ingenix to work as a consultant on the facility fee project. In addition to reviewing the pros and cons of various alternative approaches, Ingenix studied and compared payments made by private 3<sup>rd</sup>-party payors. The consensus based group has agreed to use a modified Medicare approach with respect to facility fees; however, the group is still working to achieve consensus with respect to the actual reimbursement amount.

The Board amended its rule regarding the collection of permanent impairment data. The new rule requires a permanent impairment rating or note from a health care provider stating there is no permanent injury before a case can be settled pursuant to Section 352. The Board is considering additional amendments to this rule, as well as potential legislation, to address concerns that the Board is not gathering sufficient data with respect to permanent impairment.

### **II. LEGISLATIVE ACTIVITY.**

Expected legislative initiatives for the First Regular Session of the 124<sup>th</sup> Maine Legislature include an attempt to revamp the assessment process so that assessment collections that exceed 10% of the maximum assessment are used to reduce the annual assessment on insured employers.

It is also anticipated that legislation will be introduced clarifying that the Maine Insurance Guaranty Association ("MIGA") is required to pay all penalties, with the exception of the penalty in section 359(2), provided for in Title 39-A.

### **III. EXTREME FINANCIAL HARDSHIP CASES.**

Pursuant to 39-A M.R.S.A. § 213(1) the Board "may in the exercise of its discretion extend the duration of benefit entitlement ... in cases involving extreme financial hardship due to inability to return to gainful employment."

The two hardship cases were decided in 2008.

In *Smith v. Cummings Health Care*, the Board denied a requested extension of benefits finding that the employee failed to establish extreme financial hardship.

In *Holmes-Adams v. Presque Isle Nursing Home*, a Hearing Officer appointed by the Board granted an extension of benefits finding that the employee proved she suffered extreme financial hardship due to an inability to return to gainful employment.

The decisions are available at

[http://www.maine.gov/wcb/Board\\_Decisions/section\\_213/section213.html](http://www.maine.gov/wcb/Board_Decisions/section_213/section213.html)

The Board also received its first request for reconsideration of an extension of benefits. However, the request was withdrawn in December 2009.

#### **IV. BOARD REVIEW PURSUANT TO 39-A M.R.S.A. § 320.**

The Board denied one request for review pursuant to 39-A M.R.S.A. § 320 in 2008. The issue presented by the Hearing Officer was “whether an employee has a right to videotape or audiotape a medical examination under section 207 of the Act.”

#### **V. LITIGATION.**

Two cases involving the Board are currently pending in Superior Court. The first matter is a challenge to the Board’s adoption (in 1998) of a standard for determining maximum facility fee charges for hospitals and ambulatory surgical care centers. Although originally based on an argument that the Board had failed to act with respect to such a standard, the thrust of the argument became whether the Board’s action in 1998 complies with the statutory mandate to establish such a standard. In a ruling this fall, the Superior Court sided with the plaintiffs and decided that the rule adopted in 1998 does not comply with the statute. The Board attempted to appeal this ruling, but could not because the Law Court determined it was premature. This case also involves a separate challenge to the conversion factor used to determine maximum charges for professional services. This issue is still pending in Superior Court.

The second case involves a challenge to the Board’s adoption of the 2006 permanent impairment threshold. Briefing before the Superior Court should be finished by early 2009 when the case will be ready for oral argument and decision.

## **14. 39-A M.R.S.A. § 213 THRESHOLD ADJUSTMENT AND EXTENSION OF 260-WEEK LIMITATION**

The Workers' Compensation Act provides for a biennial permanent impairment threshold adjustment and a study of whether an extension of weekly benefits is warranted. Section 213(2) provides, in part, that the Board, based on an actuarial review, adjust the permanent impairment threshold so that 25% of all cases with permanent impairment will be expected to exceed the threshold and 75% of all cases with permanent impairment will be expected to be less than the threshold. In 1998, the Board reduced the threshold from 15% to 11.8% based on an actuarial report compiled by Advanced Risk Management Techniques, Inc.

Pursuant to 39-A M.R.S.A. § 213(4), the 260-week limitation contained in Section 213(1) must be extended 52 weeks for every year the Board finds the frequency of cases involving the payment of benefits under Sections 212 and 213 is no greater than the national average. Based on a report provided by Advanced Risk Management Techniques, Inc., the limitation referenced in Section 213(4) was extended for 52 weeks on January 1, 1999.

The Workers' Compensation Board hired the actuarial firm of Deloitte & Touche to conduct the independent actuarial review for the 39-A M.R.S.A. §§ 213(2) and (4) adjustment and extension for 2000 and 2001. Based on the 2000 Deloitte & Touche actuarial report, the Board retained the 11.8% threshold and extended the limitation referenced in Section 213(4) by 52 weeks on January 1, 2000.

The Board did not extend benefits pursuant to Section 213(4) in 2001, 2002 or 2003. Based on a report provided by Practical Actuarial Solutions, Inc., the Board did not extend benefits for 2004 and 2005.

Pursuant to P.L. 2001, Ch. 712, the Board referred the threshold adjustment for January 1, 2002 to an arbitrator appointed by the American Arbitration Association. The arbitrator determined that the permanent impairment threshold for January 1, 2002 is 13.2%.

Based on a report from Practical Actuarial Solutions, Inc., the permanent impairment threshold was adjusted, effective January 1, 2004, to 13.4% from 13.2%.

Pursuant to a rule adopted in 2008, the Board did not extend the benefits pursuant to Section 213(4) in 2006. The Board also adopted a rule setting the permanent impairment threshold at 11.8% effective January 1, 2006. This figure includes the results of an exhaustive study regarding cases with a 0% rating in the Board's database, as well as a 0.1% adjustment for "stacking." The adoption of this rule has been challenged by employer/insurer groups, while the AFL-CIO has intervened as an *amicus* to support the adoption of the rule.

Based on a report from Practical Actuarial Solutions, Inc., the extension of benefits referenced in Section 213(4) was extended for 52 weeks to a total of 416 weeks effective January 1, 2007.

A report from Practical Actuarial Solutions, Inc., recommended increasing the permanent to 13.0% from 11.8% effective January 1, 2008. The Board has not yet acted on this recommendation as it is studying whether and how to gather additional data to comply with the mandate contained in section 213.

## 15. SUMMARY

The Governor worked diligently with both labor and management to ensure the passage of Public Law 2004 Chapter 608 which became effective April 8, 2004. The intent of the legislation was to break the Board's gridlock on key issues and return a sense of normalcy to the Board's operations. The legislation changed the structure of the Board from eight members to seven. Three members represent labor and three represent management. The seventh member is the Executive Director, who serves as Chair of the Board and at the pleasure of the Governor. Since the effective date of the legislation, the Board has resolved all of the gridlock issues and functions in an effective manner in setting policy for Board business. Some of the difficult issues the Board has acted on include: hearing officer appointments; hearing officer terms; budgetary and assessment matters; Section 213 actuarial studies; electronic filing mandates; by-law revisions; legislation; compliance issues; independent medical examiners; worker advocate resources and reclassifications; dispute resolution issues; increase in compliance benchmarks; independent contractors; an independent audit by Blake, Hurley, McCallum, and Conley; and a Facility Fee Schedule.

The importance of the Governor's legislation (Chapter 608) cannot be overly emphasized. The State of Maine has gradually improved its national rating regarding the costs of workers' compensation and an effective and efficient Board will help to perpetuate this positive trend. But recently the Board has been divided on issues such as the budget, independent medical examiners, and Section 213 issues (data collection and permanent impairment thresholds). These are issues of particular importance to both Labor and Management, but issues on which they have been unable to reach consensus. Decisions are regularly made by the Chair in a tie-breaking manner, which means, in large part, that the parties of interest are not reaching consensus on decisions that impact their constituencies.

It was not too long ago that Maine was one of the costliest states in the nation in regard to workers' compensation costs. A recent article in the *Workers' Compensation Policy Review* compared the costs of benefits for 47 states and highlighted Maine's achievements during the past few years: "The experience in Maine ... clearly demonstrates that significant reduction in cash, medical, and total benefits are possible."

The 2008 Edition of *Workers' Compensation State Rankings Manufacturing Industry Costs* provides a costs comparison for the manufacturing section in 45 states. The purpose of the study is to provide a comparison as to the cost of obtaining workers' compensation coverage among states. Maine's rank was 30<sup>th</sup> among 45 states and Maine's rank was 3<sup>rd</sup> among the New England states with only Massachusetts and Rhode Island faring better than Maine. The Oregon Department of Consumer and Business Services reports every two years as to overall premium costs per State. In 2002 Maine's ranking among the 50 states was 8<sup>th</sup>; in 2004, it was ranked at 13<sup>th</sup>; in 2006 it was ranked at 8<sup>th</sup>; and in 2008 it was ranked 6<sup>th</sup>.

In a recent report, *Fiscal Data for State Workers' Compensation Systems*, designed to provide employers and public policymakers with comparative statistics on state workers' compensation costs, Maine was listed as one of the states with the largest decrease in its benefit costs rate: Alabama (-7.9%), Colorado (-11.2%), Kansas (-16.5%), **Maine (-12.9%)**, Nevada (-14.7%), Rhode Island (-15.2%), and Utah (-13.2%).

And in the most recent issue of *Workers' Compensation Policy Review* (September/October 2008) Maine has been at the national average for "cash benefits, medical benefits" and "total cash and medical benefits."

Maine has gone from one of the costliest states in the nation to one that is moving to the level of average costs for both premiums and benefits and has positioned itself to continue this trend. Maine appears to have struck a balance between reasonable costs and reasonable benefits, all within the Governor's policy of keeping Maine fair-minded and competitive.

The Board will submit, at least, two bills for consideration during the First Regular Session of the 124<sup>th</sup> Legislature.

The first bill will change the assessment process so that assessment collections which exceed 10% of the maximum assessment are used to reduce the annual assessment on insured employers.

The second bill clarifies that Maine Insurance Guaranty Association (MIGA) is required to pay all penalties for non-compliance of the Maine Workers' Compensation Act, with the exception of the penalty in Section 359(2) provided for in Title 39-A.

An independent accountant report conducted by Blake, Hurley, McCallum & Conley gave the Board a clean bill of health in regard to its assessment and budgetary procedures and advanced recommendations to improve the process, most of which have been implemented by the Board. One of the recommendations that has not been dealt with was to legislatively change the "assessment statute to require insurance companies to pay assessments on the same basis as the self-insureds" (cash basis in lieu of rate basis). The change would simplify the process and reduce administrative costs, but would be very cumbersome for the insurance companies to implement.

The Workers' Compensation Board has made significant progress in regard to a Facility Fee Schedule to contain health care costs. In 2007, the Board contracted with Ingenix to review hospital inpatient, outpatient, and ambulatory surgical center charges and costs. Four meetings have been held with the consensus-based rulemaking group. Although that group was able to reach consensus on the methodology, they were unable to agree on the base rate. Staff will recommend a proposed rule to the Board in January 2009. The objectives of the Fee Schedule include: providing access to quality care for injured workers, ensuring that providers are paid fairly, reducing and containing healthcare costs, and, creating clarity in rules and simplicity for maintenance.

The Facility Fee Schedule should not be viewed as a one-time event, accordingly, Board Staff has recommendations for future courses of action:

- Medicare updates should be reviewed and adjusted annually
- Payment rates should be recalculated and adjusted annually
- Expenditures should be analyzed annually
- Ingenix should be retained for one year to review and analyze the data and make recommendations to the Board as to adjustments to the Facility Fee Schedule.

Another issue to be dealt with in 2009 is employee misclassification, which is a huge problem in Maine as well as nationally. The Governor is considering an Executive Order appointing a Task Force to analyze the problem in Maine and to make recommendations within the next 12 months to the Governor.

Overall, dispute resolution is performing at peak levels. Compliance with the Workers' Compensation Act is high. Frequency of claims is down. Compensation rates have dropped 43 percent since 1993. The Superintendent of Insurance has approved a 7.6 percent rate reduction for 2009. The self-insurance community is strong. The insurance market is competitive. And, MEMIC has recently declared a \$15 million dividend to Maine businesses. All of which contribute to one of the more stable workers' compensation systems in the country.

**SECTION B**

**BUREAU OF INSURANCE**

**SECTION B**  
**BUREAU OF INSURANCE**  
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## **INTRODUCTION AND BACKGROUND**

### **Introduction**

This report examines different measures of market competition in the Maine workers' compensation insurance market. Among the measures are: 1) the number of insurers providing coverage; 2) insurer market share; 3) changes in market share; 4) ease of entry into and exit out of the workers' compensation insurance market; and 5) comparison of variations in rates.

The tables in this report that show accident year and calendar year loss ratios contain five years of information. Loss ratios are updated each year to account for how costs have developed for claims opened, claims closed and any claims reopened during the year. Other tables and graphs contain up to ten years of information.

The recently approved advisory loss cost filing resulted in the largest decrease in loss costs since 1998. This decrease follows five years of small increases, small decreases or no change in NCCI's loss cost filings. This is a positive trend for Maine and indicates market stability.

According to NCCI, there were six consecutive decreases in lost-time claims through 2006. The frequency of injuries in Maine continues to decline but at a slower rate than it has in past years, while indemnity costs—a measure of severity—decreased slightly. Indemnity costs tend to be higher for older workers, so, as Maine's population ages, this suggests that there may be an increase in indemnity costs in the future. Maine's share of the population between ages 45 and 64 is expected to peak in 2010, although people may work longer due to the economy. Medical costs continue to increase. Forty seven percent of Maine's total benefit costs are for indemnity and 53 percent are for medical.

Although Maine's market has become quite concentrated and MEMIC writes a large volume of business, there are still many insurers writing some workers' compensation coverage in Maine. Insurers, however, are still being conservative in selecting businesses to cover or to renew. An insurer can decide to non-renew business for any reason as long as it provides the policyholder with the statutorily required advance written notice. Self-insurance provides a viable alternative for some Maine employers.

## **Accident Year, Calendar Year and Policy Year Reporting**

Workers' compensation is a long-tail line of insurance, meaning payments for claims can continue over a long period of time after the year in which the injury occurred. Thus amounts to be paid on open claims must be estimated. Insurers collect claim, premium and expense information to calculate financial ratios. This information may be presented on an accident year, calendar year, or a policy year basis. This report primarily shows information on an accident year basis. However, a description of each method and its use in understanding workers' compensation follows:

- Accident year experience matches all losses for injuries occurring during a given 12-month period of time (regardless of when the losses are reported) with all premiums earned during the same period of time (regardless of when the premium was written). The accident year loss ratio shows the percentage of earned premium that is being paid out or expected to be paid out on claims. It enables the establishment of a basic premium reflecting the pure cost of protection. Accident year losses or loss ratios are used to evaluate experience under various laws because claims are tracked by year and can be associated with the law in effect at the time of the injury. This information is projected because claim costs change over time as claims further develop, with the ultimate result determined only after all losses are settled. Therefore, the ratios for each year are updated on an annual basis.
- Calendar year loss ratios match all losses incurred within a given 12-month period (though not necessarily for injuries occurring during that 12-month period) with all premiums earned within the same period of time. Because workers' compensation claims are often paid out over a long period of time, only a small portion of calendar year losses are attributable to premiums earned that year. Many of the losses paid during the current calendar year are for claims occurring in past calendar years. Calendar year loss ratios also reflect aggregate reserve adjustments for past years. For claims expected to cost more, reserves are adjusted upward; for those expected to cost less, reserves are adjusted downward. Calendar year incurred losses are used primarily for financial reporting. Once calculated for a given period, calendar year experience never changes.
- Policy year experience segregates all premiums and losses attributed to policies having an inception or a renewal date within a given 12-month period. The total value of all losses for injuries occurring during the policy year (losses paid plus loss reserves) are assigned to the period regardless of when they are actually reported. They are matched to the fully developed earned premium for those same policies. The written premium will develop into earned premium for those policies. The ultimate incurred loss result cannot be finalized until all losses are settled. It takes time for the losses to develop, so it takes about two years before the information is useful. This data is used to determine advisory loss costs.

## **The Underwriting Cycle**

Insurance tends to go through underwriting cycles, successive periods of increasing or diminishing competition and increasing or decreasing premiums. These cycles are important factors in the short-term performance of the insurance industry. Hard markets are periods in which there is less capacity and competition and fewer insurers willing to write business. Soft markets are periods of increased competition identified by more capacity to write business, falling rates, and growing loss ratios, which can result in insurer operating losses. This can eventually force loss ratios to critical levels, causing insurers to raise their rates and be more selective in writing business. Insurer profitability and surplus eventually recover. This situation, in time, spurs another round of price-cutting, perpetuating the cycle.

In the late 1980s and early 1990s, the Maine's workers' compensation insurance market was hard. From the mid-1990s until about 2000, the market was considered soft. After 2000 insurance markets generally became less competitive, and this trend increased following the events of September 11, 2001 attacks. Over the last several years, the Maine market hardened as insurers tightened their underwriting standards and reduced premium credits. However, recent signs are that the Maine market is softening. More insurers have become licensed to write workers' compensation insurance and some have reduced their rates or have offered more credits.

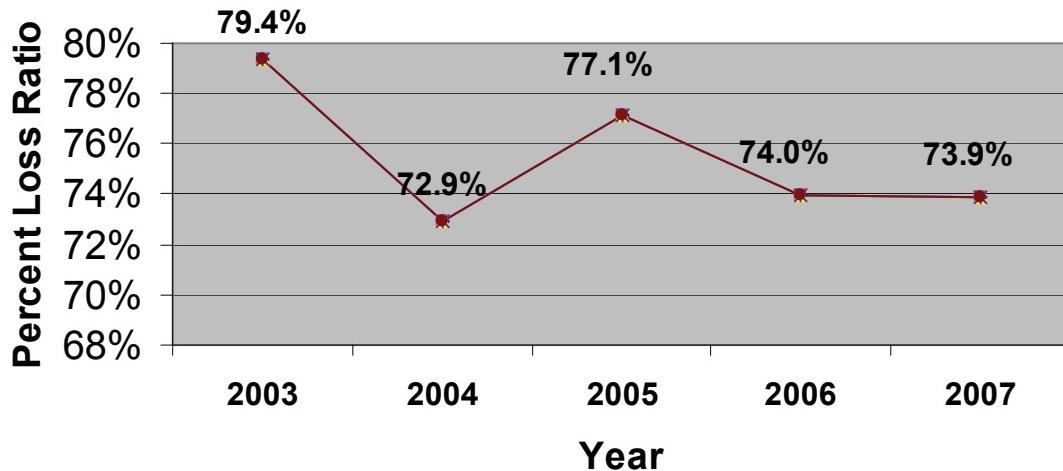
## RECENT EXPERIENCE

### Accident Year Loss and Loss Adjustment Expense Ratios

The accident year loss ratio shows the percent of earned premium used to fund losses and their settlement. Loss ratios that exceed 100% mean that insurers are paying out more in benefits than they collect in premiums. A decrease in these loss ratios over time may reflect increased rates, improved loss experience, or changes in reserve (i.e., the amount of money expected to be paid out on claims). Conversely, an increase in the loss ratios may reflect decreased rates or worsening loss experience. The loss ratio does not include insurers' general expenses, taxes and contingencies, profit or investment income.

Exhibit I shows the accident year loss ratios for the most recent five years available. Loss ratios in this report are based on more mature data and may not match the loss ratios for the same years in prior reports. Claim costs and loss adjustment expenses for prior years are further developed, so the loss ratios reflect more recent estimates of what the claims will ultimately cost. The accident year loss ratio has ranged from about 73% to slightly over 79% for the past five years. The 2007 loss ratio was 73.9%, indicating that about \$74 is expected to be paid out for losses and loss adjustment expenses for every \$100 earned in premium. This is nearly the same as it was in 2006.

### Exhibit I. Accident Year Loss and Loss Adjustment Expense Ratios



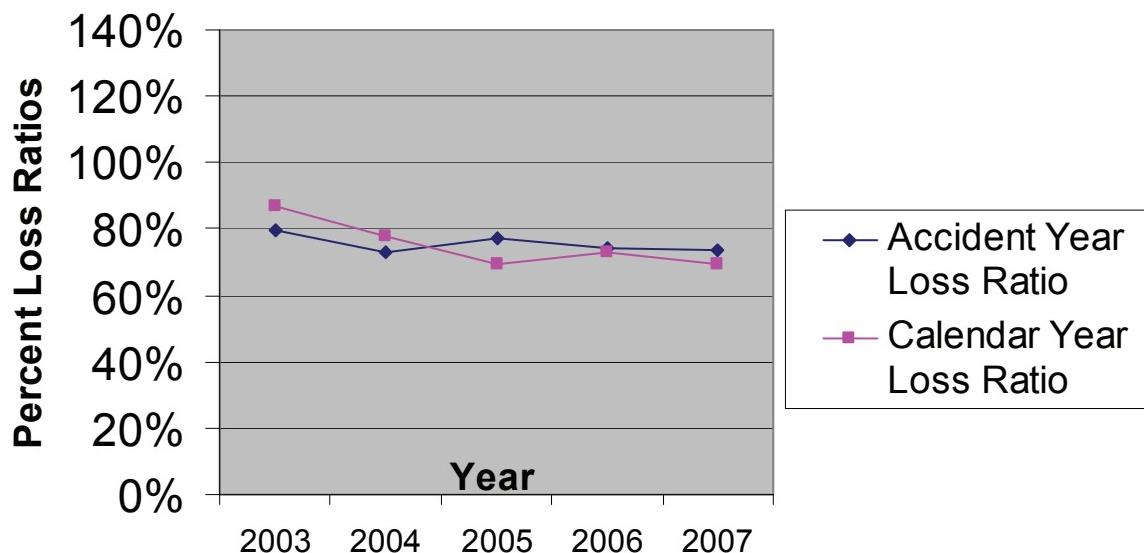
Source: National Council on Compensation Insurance

## Calendar Year and Accident Year Loss Ratios

Calendar year loss ratios compare losses incurred with premium earned in the same year (although only a small portion of the losses are attributable to premiums earned that year). Calendar year loss ratios reflect payments and reserve adjustments (changes to estimated ultimate cost) on all claims during a specific year, including those adjustments from prior injury years. While calendar year data is relatively easy to compile and is useful in evaluating the financial condition of an insurance company, accident year data is more useful in evaluating the claim experience during a particular period because it better matches premium and loss information. In addition, the accident year experience is not distorted by reserve adjustments on claims that occurred in prior periods, possibly under a different law. These ratios do not include amounts paid by insurers for sales, general expenses and taxes, nor do they reflect investment income. The movement of the calendar year loss ratios from below to above the accident year loss ratios may reflect increases in reserves on prior accident years.

Exhibit II shows calendar year and accident year loss ratios. The calendar year loss ratio of 86.6% in 2003 was the highest in the period of 2003-2007. Since that time it dropped to 69.3% in 2007, which was about the same as in 2005 when it was at a low of 69.1%. The accident year loss ratio has stayed within a six or seven percent band over the period of 2003-2007, ranging from a high of 79.4% to a low of 72.9%. In 2007 it was 73.9%.

**Exhibit II. Accident and Calendar Year Loss Ratios**



Source: National Council on Compensation Insurance

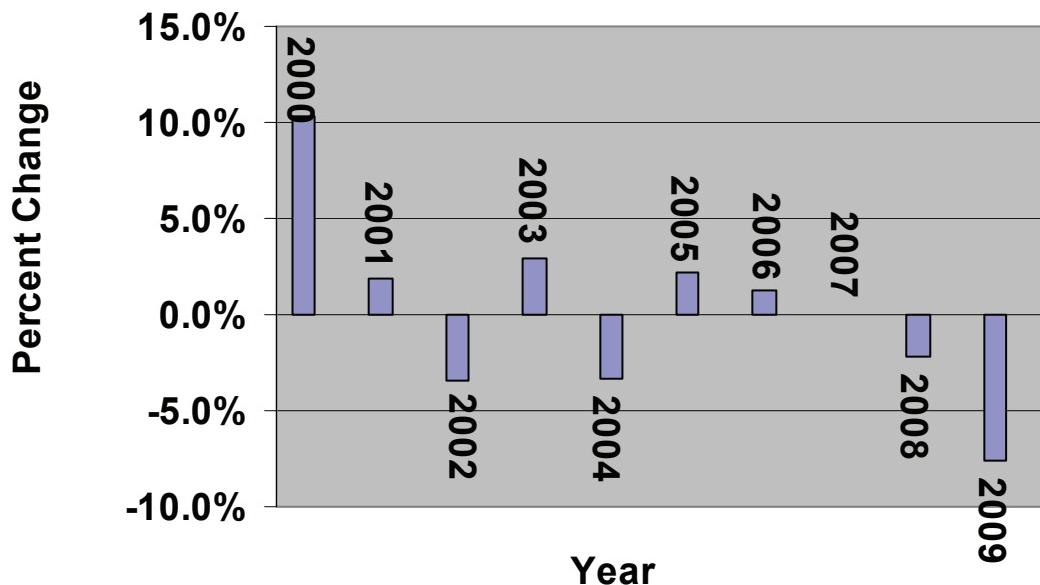
## **LOSSES IN WORKERS' COMPENSATION**

### **Changes in Advisory Loss Costs**

The National Council on Compensation Insurance (NCCI) files advisory loss costs on behalf of workers' compensation carriers. Advisory loss costs reflect the portion of the rate that applies to losses and loss adjustment expenses. Advisory loss costs do not account for what insurers pay for general expenses, taxes and contingencies, nor do they account for profits and investment income. Under Maine's competitive rating law, each insurance carrier determines what to load into premium to cover those items.

In 2008, the advisory loss costs decreased slightly. The Bureau of Insurance recently approved a 7.6% decrease in advisory loss costs effective January 1, 2009. Advisory loss costs will be about six percent lower than they were three years ago and nearly 43 percent lower than when the most recent major reform of the workers' compensation system occurred in 1993. Changes in the advisory loss costs tend to lag behind changes in actual experience and to precede changes in rates.

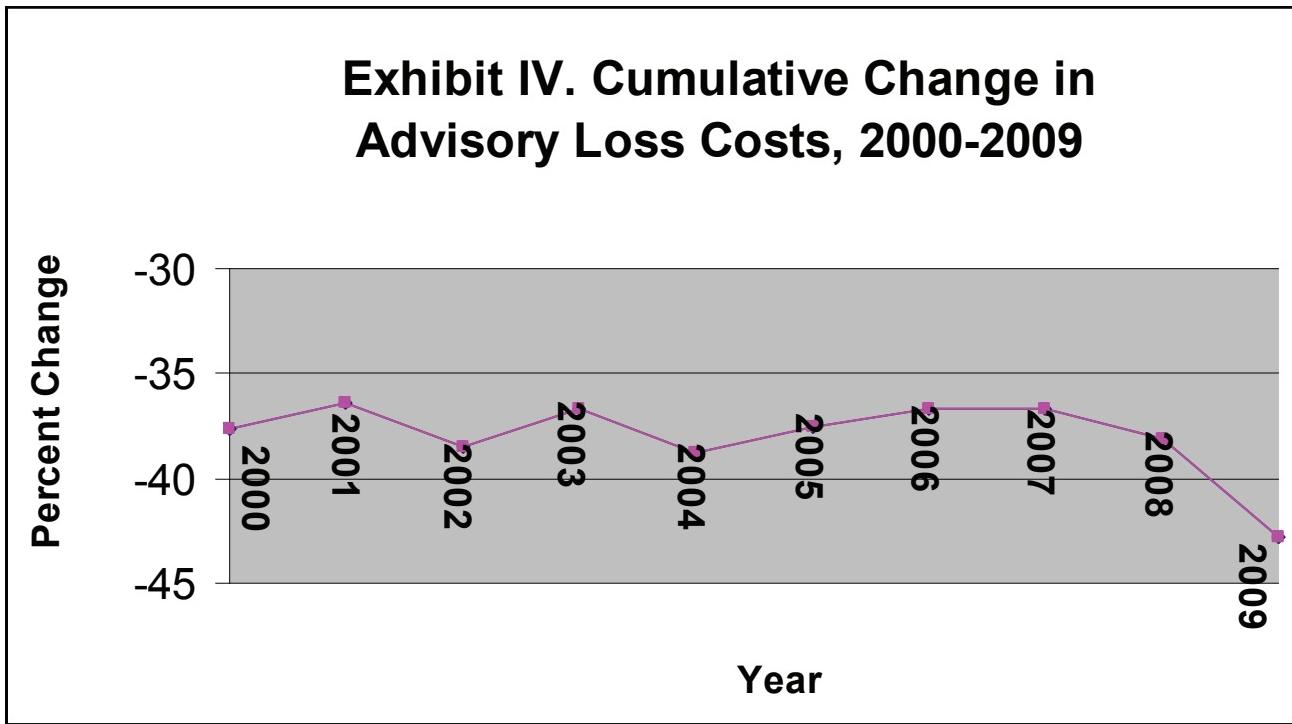
**Exhibit III. Percent Change in  
Advisory Loss Costs, 2000-2009**



Source: National Council on Compensation Insurance

## Cumulative Changes in Advisory Loss Costs

Exhibit IV shows the cumulative changes in loss costs over the past ten years. After three years of increases or no change, the advisory loss costs declined during the past two years, with this year's decline being the largest in twelve years.



Source: National Council on Compensation Insurance

## **MARKET STRUCTURE AND COMPETITION**

### **Market Concentration**

Market concentration is another measure of competition. Greater concentration means that there are fewer insurers in the market or insurance written is concentrated among fewer insurers. The result is less competition. Conversely, less concentration indicates greater competition because more insurers are in the market.

As of October 1, 2008, 282 companies were authorized to write workers' compensation coverage in Maine. This number is not the best indicator of market concentration because some insurers have no written premium. In terms of written premium, MEMIC has 61% of the insured market. Although MEMIC has been successful in retaining business, other insurers are selectively increasing their market share. The following table shows the number of carriers by premium level for those carriers writing workers' compensation insurance in 2007. The number of carriers writing greater than \$1 million dollars in written premium has increased from 21 in 2004 to 27 in 2007. This information indicates that the market is somewhat less concentrated than it was a few years ago.

**Table I: Number of Companies by Level of Written Premium--2007**

Amount of Written Premium	Number of Companies At That Level
>\$10,000	120
>\$100,000	80
>\$1,000,000	27

Source: Annual Statements Filed with the Bureau of Insurance. Total written premium for 2007 was over \$240 million.

Looking only at market concentration does not give a complete picture of market competition. A discussion of self-insurance, found in the Alternative Risk Markets section, gives a more balanced perspective.

## **Herfindahl Hirschman Index**

The Herfindahl-Hirschman Index (HHI) is a method to measure market concentration. The HHI is calculated by summing the squares of the market shares (percentages) of all groups in the market. The National Association of Insurance Commissioners publishes a Commercial Lines Competition Database Report as a reference source of measures to examine the competitiveness of state insurance markets, and the HHI is one of the data elements in the report. The 2008 Database Report, based on 2006 information, shows that the HHI for the workers' compensation insurance in Maine is 4,188. This is the second highest for all commercial lines in Maine behind medical malpractice which is 4,536. All other commercial lines were between 399 and 930. As mentioned in the Database Report, there is no precise point at which the HHI indicates that a market or industry is so concentrated that competition is restricted. The U.S. Department of Justice's guidelines for corporate mergers uses 1800 to indicate highly concentrated markets and the range from 1000 to 1800 to indicate moderately concentrated markets. A market with an HHI below 1000 is considered not concentrated. Applying the HHI to the Maine's workers' compensation market might not be a helpful gauge of this market for two reasons. First, the Maine legislature created an employer owned mutual insurer created to replace a highly concentrated residual market where other insurers were reluctant to write actively in this state. Second, the market has a high percentage of employers self-insured individually or in a group.

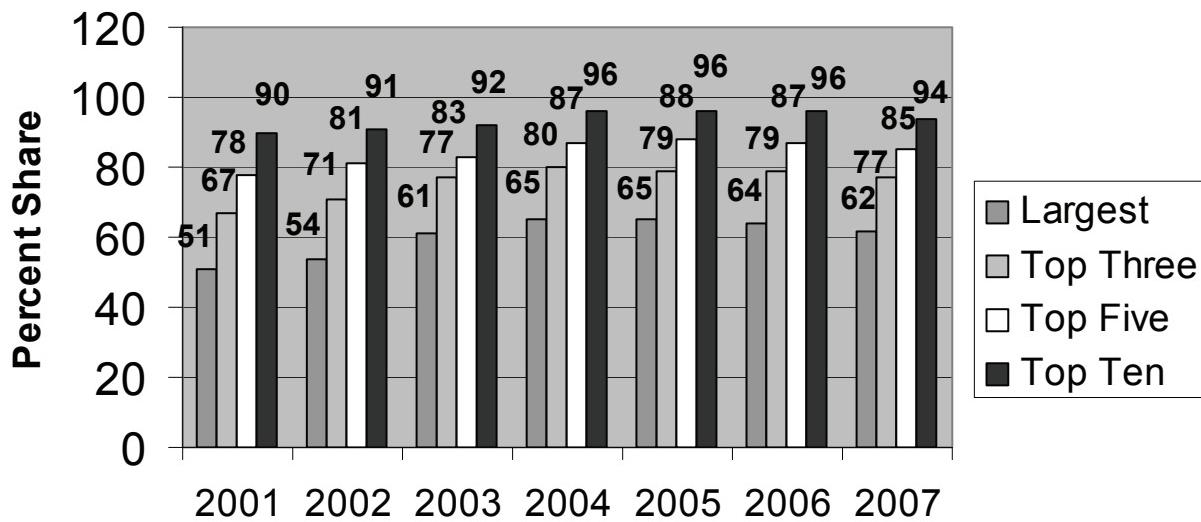
Source: NAIC 2006 Commercial Lines Competition Database Report.

## Combined Market Share

An insurance group is a carrier or group of carriers under common ownership. Exhibit V illustrates the percent market share of the largest commercial insurance group, in terms of written premium, as well as the percent market share for the top three, top five and top 10 insurer groups. Maine Employers' Mutual Insurance Company (MEMIC) has the largest market share. Its share fell from 67% of the commercially insured market in 1995 to 45% in 1999. That trend reversed in 2000 and its market share rose to nearly 65% by 2004. Over the past three years MEMIC's market share has dropped to about its 2003 level.

Market share of the top 10 insurer groups fell from 96 to 94% in 2007, after remaining steady for the prior three years. All other groups wrote only 6% of the workers' compensation premium in Maine. In dollars, MEMIC wrote over \$147 million in premium in 2007: nearly \$13 million less than it did two years prior. The top three groups, including MEMIC, wrote over \$184 million in business, about \$7 million less than in 2006. The top five groups had nearly \$205 million in written premium, which is nearly \$5 million less than in 2005. The top 10 groups wrote over \$226 million in premium in 2007, approximately \$5 million less than in 2006. The remaining insurance groups had written premium totaling less than \$14 million.

**Exhibit V. Combined Market Share by Insurer Group, 2001-2007**



Source: Annual Statements Filed with the Bureau of Insurance

## **Number of Carriers in the Maine Insurance Market**

The number of carriers in the workers' compensation market has increased throughout the period shown in the table below. The number of carriers who can file rates and are eligible to write workers' compensation coverage has increased by more than 50 percent over 1998 levels. There currently are no significant barriers to entry.

<b>Table II: Entry and Exit of Workers' Compensation Carriers, 1999-2008</b>					
<b>Year</b>	<b>Number of Carriers</b>	<b>Number Entering</b>	<b>Number Exiting</b>	<b>Net Change (Number)</b>	<b>Net Change (Percent)</b>
2008	282	13	4	9	3.3
2007	273	11	5	6	2.3
2006	267	14	4	10	3.9
2005	257	4	1	3	1.1
2004	254	5	2	3	1.2
2003	251	11	1	10	4.2
2002	241	15	2	13	5.7
2001	228	24	6	18	8.6
2000	210	12	0	12	6.1
1999	198	11	0	11	5.9

Source: Maine Bureau of Insurance Records.

Notes: Based upon the number of carriers licensed to transact workers' compensation insurance as of October 1 of each year. Beginning in 2001, the number exiting the market includes companies under suspension.

## Percent Market Share of the Top Insurance Groups

Table III shows market share by insurance group from 2001-2007. Information by group is more relevant when assessing competition because carriers in a group are under common control and are not likely to compete with one another.

<b><i>Insurance Group</i></b>	<b>2007 Share</b>	<b>2006 Share</b>	<b>2005 Share</b>	<b>2004 Share</b>	<b>2003 <i>SHAR E</i></b>	<b>2002 <i>SHAR E</i></b>	<b>2001 <i>SHAR E</i></b>
<b>Maine Employers' Mutual</b>	61.6	63.6	64.8	65.4	61.5	54.4	51.5
Liberty Mutual Group	8.8	9.2	8.4	9.4	9.6	10.4	7.9
WR Berkeley Corp.	6.3	6.1	5.6	5.4	5.8	6.5	7.4
American International	5.2	4.9	5.1	4.1	3.3	0.2	0.3
Hartford Fire & Casualty	3.6	3.3	3.8	1.9	2.0	3.1	5.4
Travelers	2.2	1.9	1.6	2.3	1.3	1.7	1.2
Guard Insurance Group	2.0	2.3	2.1	2.0	1.8	1.2	1.0
Allmerica Financial Corp.	1.7	2.1	1.9	1.7	1.6	2.6	2.0
ACE Ltd	1.6	1.3	1.6	0.5	0.8	1.3	0.9
Zurich Insurance Group	1.3	0.9	0.6	1.7	1.6	2.6	2.0

Source: Annual Statements Filed with the Bureau of Insurance

## Percent Market Share of the Top Insurance Companies

Table IV shows the percent of market share for the top carriers for each calendar year from 2001 through 2007. For the fifth straight year, MEMIC has more than 60 percent of the market; however, its market share has decreased each of the last three years. For the fourth straight year, none of the other carriers attained a five percent market share. The top ten companies combined write nearly 79 percent of the business. No carrier outside the top 13 accounts for more than one percent of the written premium.

**Table IV. Percent Market Share for Top Insurance Carriers, By Amount of Written Premium, 2001-2007**

<b>Insurance Carrier</b>	<b>2007 Share</b>	<b>2006 Share</b>	<b>2005 SHAR E</b>	<b>2004 SHAR E</b>	<b>2003 SHAR E</b>	<b>2002 SHAR E</b>	<b>2001 SHAR E</b>
Maine Employers' Mutual	61.6	63.6	64.8	65.3	61.5	54.4	51.5
Acadia Insurance Company	4.5	4.5	4.3	4.4	5.3	6.0	6.8
American Home Assurance Co.	2.1	1.5	0.9	0.8	1.1	0.1	0.1
Liberty Insurance Corp.	2.1	2.5	1.7	1.1	1.4	1.2	1.1
Commerce & Industry	1.8	2.1	2.1	2.1	1.2	0.0	0.1
Excelsior Insurance Co.	1.4	1.2	1.0	0.9	0.7	0.8	1.0
Twin City Fire Ins Co.	1.4	1.6	2.0	0.9	0.9	0.6	0.5
Netherlands	1.4	0.9	0.3	0.2	0.2	0.4	0.6
Fireman's Fund of Wash DC	1.3	1.1	0.9	0.7	0.6	0.0	0.3
Hanover Insurance Co.	1.1	1.6	1.7	1.8	2.0	1.9	3.3

Source: Annual Statements Filed with the Bureau of Insurance

Notes: \* Indicates carrier was not among the top 10 carriers for written premium that year.

## **DIFFERENCES IN RATES AND FACTORS AFFECTING RATES**

### **Rate Differentials**

There is a wide range of potential rates for workers' compensation policyholders, but most employers are not able to get the lowest rates. Insurers are selective in accepting risks for the lower-priced plans. Their underwriting is based on such factors as prior-claims history, safety programs and classifications. An indication that the current workers' compensation market may not be fully price competitive is the distribution of policyholders among companies with different loss cost multipliers or among a single company with multiple rating tiers. The Bureau of Insurance surveyed the top ten insurance groups and all of the companies in those insurance groups. We asked for the number of policyholders and the amount of written premium for in-force policies in Maine within each of their rating tiers. The carriers that responded accounted for over 94% of the market and over \$226 million in written premium in Maine for calendar year 2007. The results show that over 68 percent of policyholders are written at rates equivalent to Maine Employers' Mutual Insurance Company's (MEMIC) Standard Rating tier. Over 23 percent are written at rates lower than MEMIC's Standard Rating tier. This is an increase of over four percent from last year's survey and indicates market softening. Most of this change is due to policyholders receiving lower rates either with MEMIC or with other companies. Over eight percent of policyholders have policies written at rates that are above MEMIC's Standard Rating tier, slightly more than last year.

Possible reasons for policyholders accepting rates higher than MEMIC's Standard Rating tier are: 1) an insurer, other than MEMIC, provides workers' compensation coverage, although it might not otherwise, because it provides coverage for other lines of insurance and the insurer provides a good overall package to the insured; 2) an insurer, other than MEMIC, charges a higher rate but offers enough credits to lower the overall premium; and 3) the insured would have been placed in MEMIC's High Risk Rating tier because of its poor loss history.

<b>Percent of Reported Policyholders At, Above or Below MEMIC's Standard Rating Tier Rates</b>		
<b>Rate Comparison</b>	<b>2008 Percent</b>	<b>2007 Percent</b>
Below MEMIC Standard Rate	23.48%	19.37%
At MEMIC Standard Rate	68.21%	72.76%
Above MEMIC Standard Rate	8.31%	7.88%

Note: Based upon the results of a survey conducted by the Bureau of Insurance. Respondents included carriers in the top 10 insurance groups in Maine.

## **Additional Factors Affecting Premiums**

Some employers have other options described below, available that may affect the premiums they pay for workers' compensation insurance. However, these options are available only if the insurer offers them. While they might lower an employer's premium, they also carry some risk of greater exposure.

Employers should carefully analyze certain options, such as retrospective rating (retros) and large deductible policies, before deciding on them. Below is a description of each:

- **Tiered rating** means that an insurer has more than one loss cost multiplier to use, based on where a potential insured falls in its underwriting criteria. Tiered rating may apply to groups of insurers that have different loss cost multipliers for different companies in the group. Our records indicate that over 80 percent of insurers either have different loss cost multipliers on file or are part of a group that does.
- **Scheduled rating** allows an insurer to consider other factors that may not be reflected in an employer's experience rating when determining an individual employer's premium for the employer. Such factors include safety plans, medical facilities, safety devices and premises are considered and can result in a change in premium of up to 25 percent. Over 77 percent of insurers with filed rates in Maine have received approval to utilize scheduled rating.
- **Small deductible plans** must be offered by insurers. These include medical benefit deductibles in the amounts of \$250 per occurrence for non-experience rated accounts and either \$250 or \$500 per occurrence for experience rated accounts. Insurers must also offer deductibles of either \$1,000 or \$5,000 per claim for indemnity benefits. Payments are initially made by the insurer and then reimbursed by the employer. The table below lists, effective January 1, 2008, the percentage reduction in the advisory loss costs received for electing small deductibles.

Deductible Amount	Percentage
\$1,000 Per Claim for Indemnity Payments	0.7%
\$5,000 Per Claim for Indemnity Payments	2.6%
\$250 Per Occurrence for Medical Payments	1.2%
\$500 Per Occurrence for Medical Payments	2.4%

- **Managed Care Credits** are credits offered by insurers to employers who use managed care plans. Nearly eleven percent of insurers offer managed care credits.
- **Dividend Plans** provide a return premium to the insured after the policy expires if losses are lower than average. Premiums are not increased if losses are greater than average. Because losses may still be open for several years after policy expiration, dividends will usually be paid periodically with adjustments for any changes in the amount of incurred losses. Dividends are not guaranteed. On September 25, 2008, MEMIC declared a dividend of \$15,000,000. The dividend was based upon premium paid to MEMIC on 2005 policies and

will be paid in November to over 20,000 policyholders. MEMIC has returned more than \$100 million back to policyholders since 1998.

- **Retrospective rating** means that an employer's final premium is a direct function of its loss experience for that policy period. If an employer controls its losses, it receives a reduced premium; conversely, if the employer has a bad loss experience, it receives an increased premium. Retrospective rating utilizes minimum and maximum amounts for a policy and is typically written for larger, sophisticated employers.
- **Large deductible plans** are for employers who agree to pay a deductible that can be in excess of \$100,000 per claim. The law requires that the insurer pay all losses associated with this type of policy and then bill the deductible amounts to the insured employer. The advantages of this product is a discount for assuming some of the risk. It is an alternative to self-insurance.
- **Loss Free Credits** may be given to employers who have had no losses for specified periods of time. Over 47 percent of MEMIC's non-experience rated accounts or about 9,800 policyholders, currently receive loss free credits of between eight and 25 percent.
- **Terrorism Risk Insurance Act (TRIA)** is a federal program to protect consumers and insurers by addressing market disruptions and ensuring the continued availability and affordability of insurance for terrorism risk. Under TRIA, the federal government shares the cost of terrorist attacks with the insurance industry. Federal payments in extreme events help eliminate the insolvency risk for the insurance industry. Terrorism coverage is a separate step in determining workers' compensation premium and, like state-required workers' compensation coverage, is a charge based upon payroll for federal terrorism coverage. Acts of terrorism cannot be excluded in workers' compensation and since September 2001 reinsurance contracts have excluded coverage for terrorist acts. In 2007 the Terrorism Risk Insurance Revision and Extension Act was approved and redefined terrorism to include domestic and foreign terrorism.

In the Bureau's survey of insurers in the top 10 groups, mentioned earlier in this report, we found that nearly \$59 in credits was provided for every \$1 in debits. Additionally, over \$15.6 million in dividends were paid out in 2007, with over 89 percent of those reported dividends issued by MEMIC. There were over \$3 million more in dividends paid out in 2007 than in 2006. Additionally, there was \$43 more in credits for every \$1 in debits in 2007 than there were in 2006. The amount of credits in the top 10 groups in 2007 rose nearly \$8 million over 2006 and the amount of debits decreased by nearly \$1.4 million.

## **ALTERNATIVE RISK MARKETS**

### **Percent of Overall Market Held by Self-Insured Employers**

Self-insurance plays an important role in Maine's workers' compensation market. Self-insured employers pay for losses with their own resources rather than by purchasing insurance. They may, however, choose or be required by the Bureau of Insurance to purchase insurance for losses that exceed a certain limit. One advantage of being self-insured is better cash flow. Employers who self-insure anticipate that they would be better off not paying premiums. They are likely to have active programs in safety training and injury prevention. In 2007, over 42 percent of Maine's total workers' compensation insurance market consisted of self-insured employers and groups. This is the highest level since 2003.

The estimated standard premium for individual self-insurance is determined by multiplying the advisory loss cost by a factor of 1.2, as specified in statute then multiplying that figure by the payroll amount, dividing the result by 100 and then applying experience modification. As advisory loss costs, and therefore rates, decline, so does the estimated standard premium. Group self-insurers determine their own rates subject to review by the Bureau of Insurance.

**Table VI: Estimated Standard Premium for Self-Insured Employers and Percent of the Workers' Compensation Market Held by Self-Insurers, 1998-2007**

Year	Estimated Standard Premium	Percent of Workers' Comp. Market (in annual standard premium)
2007	\$174,830,526	42.1
2006	\$167,535,911	40.9
2005	\$167,278,509	40.3
2004	\$171,662,347	41.7
2003	\$182,379,567	43.1
2002	\$167,803,123	43.0
2001	\$159,548,698	43.9
2000	\$126,096,312	42.1
1999	\$116,028,759	45.4
1998	\$120,799,841	49.0

Source: Annual Statements Filed with the Bureau of Insurance.

- Notes:
1. Estimated standard premium figures are as of December 31.
  2. The percent of the workers' compensation market held by self-insured employers is calculated by taking the estimated standard premium for self-insured employers, dividing it by the sum of the estimated standard premium for self-insured employers and the written premium in the regular insurance market, and then multiplying that figure by 100.
  3. 2003 Estimated Standard Premium was revised to reflect updates to information by one self-insured group.

## **Number of Self-Insured Employers and Groups**

There was very little change in the volume of self-insured employers in 2008. As of October 1, 2008 there were 19 self-insured groups representing approximately 1,461 employers as well as 70 individual self-insured employers in Maine. In fact, the number of self-insured groups and individually self-insured employers remained the same as last year. The number of self-insured groups has been either 19 or 20 for the past ten years.

<b>Table VII: Number of Self-Insured Groups, Employers in Groups, and Individually Self-Insured Employers 1999-2008</b>			
<b>Year</b>	<b># of Self-Insured Groups</b>	<b># of Employers In Groups</b>	<b># of Individually Self-Insured Employers</b>
2008	19	1,461	70
2007	19	1,478	70
2006	20	1,437	71
2005	20	1,416	80
2004	20	1,417	86
2003	19	1,351	91
2002	19	1,235	98
2001	19	1,281	92
2000	19	1,247	98
1999	20	N/A	115

Source: Bureau of Insurance Records

### **Notes:**

1. For the purposes of self-insurance, affiliated employers are considered separate employers. N/A indicates that the information is not available.
2. The number of individually self-insured employers and self-insured group information beginning in 2001 is as of October 1 of the year listed. Figures for years 2000 and before are as of the beginning of the year listed.

### **A LOOK NATIONALLY**

## **Manufacturing Industry and Office and Clerical Operations**

Each year Actuarial and Technical Solutions, Inc. (ATS) collects information from states which is used in a publication entitled, "Workers' Compensation State Rankings--Manufacturing Industry Costs and Statutory Benefit Provisions." Until 2005, the study ranked workers' compensation in the manufacturing sector only. In response to inquiries about the cost of workers' compensation in other sectors, ATS began publishing information on office and clerical employees. This includes classes such as accountants, engineers, school professionals, attorneys and other office and clerical employees.

In the 2008 study, Maine ranked 32nd in workers' compensation average statutory benefit provisions (excluding medical benefits). Our rank in 2007 was 25<sup>th</sup>. According to ATS, the reason for the change in rank was that healing period costs for non-scheduled permanent partial impairment benefits were not reflected in their previous report findings. All fifty states were ranked. A lower rank indicates lower statutory benefits. In addition to statutory benefit provisions, states were ranked by comparative cost for both office and clerical operations and for manufacturing. In 2008, Maine ranked 35<sup>th</sup> in office and clerical and 30<sup>th</sup> in manufacturing. We were ranked 36<sup>th</sup> and 29<sup>th</sup> respectively in 2007. This means that our comparative costs improved one position in office and clerical and fell one position in manufacturing.

### **Oregon Workers' Compensation Premium Rate Ranking**

In another study, conducted bi-annually by the State of Oregon, Maine ranked 6th in terms of 2008 workers' compensation premium rates for all industries. In this study, a lower rank indicates higher premium rates. In the 2006 study, Maine ranked 8th overall and in the 2004 study, Maine also ranked 13<sup>th</sup>. This study focused on 50 classifications based on their relative importance as measured by their share of losses in Oregon. Results are reported for all 50 states and for the District of Columbia.

## Average Loss Costs by State Based Upon Maine's Payroll Distribution

NCCI developed a spreadsheet which shows the average loss cost for Maine compared to the average loss cost for other states based upon Maine's payroll distribution. Maine had the fifth highest average loss costs of the 35 states and the District of Columbia reporting information to NCCI.

<b>State</b>	<b>Average Loss Cost</b>	<b>Rank</b>
Montana	\$3.20	1
Alaska	\$2.16	2
Illinois	\$2.11	3
Vermont	\$1.97	4
<b>Maine</b>	<b>\$1.93</b>	<b>5</b>
New Hampshire	\$1.86	6
Alabama	\$1.84	7
Kentucky	\$1.83	8
Connecticut	\$1.80	9
Oklahoma	\$1.76	10
Georgia	\$1.69	11
North Carolina	\$1.67	12
South Carolina	\$1.61	13
Tennessee	\$1.57	14
Louisiana	\$1.56	15
Nevada	\$1.53	16
Colorado	\$1.51	17
Nebraska	\$1.49	18
Oregon	\$1.49	18
Mississippi	\$1.44	20
Florida	\$1.42	21
Missouri	\$1.42	21
Iowa	\$1.41	23
Idaho	\$1.37	24
New Mexico	\$1.37	24
Rhode Island	\$1.37	24
South Dakota	\$1.37	24
Maryland	\$1.33	28
Kansas	\$1.26	29
Arizona	\$1.21	30
District of Columbia	\$1.13	31
Hawaii	\$1.13	31
Utah	\$1.08	33
Virginia	\$0.97	34
Indiana	\$0.87	35
Arkansas	\$0.85	36

Note: Average loss cost does not include expense and profit loading and is an average using all payroll. The actual average for an employer will depend on the type of business and payroll mix. The relatively high total payroll and relatively low loss cost for the clerical classification causes the statewide average to be lower

**SECTION C**

**BUREAU OF LABOR STANDARDS**

# **SECTION C**

## **BUREAU OF LABOR STANDARDS**

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## 1. INTRODUCTION

### **1A. ROLE OF THE BUREAU OF LABOR STANDARDS IN PROTECTING MAINE WORKERS**

The Bureau of Labor Standards (BLS) of the Maine Department of Labor (MDOL) works in collaboration with the Maine Workers' Compensation Board (WCB) in the prevention of occupational injuries and illnesses by a variety of means. Under Maine Statute, Title 3 MRSA § 42, the BLS has the authority to collect and analyze statistical data on work-related injuries and illnesses and their effects. Title 26 MRSA § 42-A also charges the BLS with establishing and supervising safety education and training programs. Additionally, MDOL is responsible for overseeing the employer-employee relationship in the state through enforcement of Maine labor laws and the related rules and standards, including occupational safety and health standards in the public sector. By accomplishing its mandated functions, the BLS complements the WCB in prevention of workplace injuries and illnesses in Maine.

To successfully accomplish its functions, the BLS works with the WCB to gather data relative to injuries and illnesses sustained by Maine workers. The BLS and the WCB collect their data through several mechanisms. Both agencies strive for the highest quality of available data. The BLS administers the following data collection programs: 1) the federal Bureau of Labor Statistics' Survey of Occupational Injuries and Illnesses (SOII), 2) the federal Occupational Safety and Health Administration's (OSHA) Data Initiative (ODI), and 3) the Census of Fatal Occupational Injuries (CFOI). The WCB collects data from its *First Report of Occupational Injury or Disease* forms. Using the WCB administrative tracking system, the BLS electronically imports the contents of the WCB *First Reports* for analysis and as supplements to its own data. The combined information is then used in benchmarking and prioritizing BLS workplace safety activities such as training, education, advocacy, and public sector enforcement.

A number of significant areas of employment have low levels of coverage by the WCB, notably commercial fishing and agriculture. Since the responsibilities of the MDOL extend to all Maine workers, the BLS is working to build means to acquire the data to allow assessment of services needed in these areas as well. This report, however, is largely limited to industries in common between the WCB system and the BLS.

### **1B. ORGANIZATION OF THIS REPORT**

The report is organized to provide as complete as possible a picture of the prevention of occupational injuries and illnesses, including enforcement activities.

- **Part 2** of this report will describe the workplace injury and illness prevention activities of the BLS and its partners in the occupational safety and health (OSH) community, including outreach, advocacy, and enforcement.
- **Part 3** will present research programs of the BLS and some resulting data and conclusions.

- **Part 4** will discuss how current information gathering and sharing can be improved and provide an update on the initiative in this area.
- **Part 5** will outline 2008 developments and some prospects for the immediate future.

## 2. PREVENTION SERVICES AVAILABLE

### 2A. SAFETYWORKS!

SafetyWorks! is an identity that encompasses the occupational safety and health (OSH) training, consultation and outreach functions of the Bureau of Labor Standards (BLS). Under its umbrella, a variety of free education and outreach services are made available to Maine employers, employees, and educators. These activities include use of the Maine Workers' Compensation Board (WCB) data to supplement the federal Bureau of Labor Statistics and OSHA data to respond to requests for information from the OSH community and the general public on the safety and health status of Maine workers.

SafetyWorks! instructors may design their safety training programs based on industry profiles generated from data from the WCB *First Reports* among other sources. By analyzing the WCB data, SafetyWorks! instructors and consultants can see what types of injuries and illnesses are prevalent in different industry sectors in Maine. This information allows outreach and education activities to be tailored to those employers and their needs. For example, the Outreach and Education Unit (O&E) uses the age and industry profiles from the WCB *First Reports* to target its young workers' safety initiatives.

#### *Employer and Employee Training and Education*

**General OSH Training.** SafetyWorks! develops and offers industry-specific and problem-specific training. WCB data can suggest the need for and direct the targeting of such training. In addition to such targeted training programs, the BLS provides OSHA and Mine Safety and Health Administration (MSHA) approved regulatory compliance training. Approximately 50 different curricula of all types are offered, ranging in scope from 30-hour OSHA compliance courses to such tightly focused efforts as VDT operator training requiring as little as two hours. This includes free training in OSHA recordkeeping, something critical to collecting accurate federal data and, we believe, unique to the state of Maine. Some of this training is offered centrally at the SafetyWorks! Training Institute in Fairfield and some is worksite-delivered at employer request. In fiscal 2008, 71 safety classes were completed with 849 attendees.

**Child Labor Education.** A special emphasis of O&E is the education of young workers. To encourage employers to provide safe work experiences for their teenage workers, the BLS developed the curriculum, *Starting Safely: Teaching Youth about Workplace Safety and Health*. The three-hour curriculum is designed to teach middle and high school age youth about their safety rights and responsibilities on the job. In 2002, O&E was authorized by Keene State College (New Hampshire) to present to educators the train-the-trainer course that allows the teachers to use this curriculum. The train-the-trainer course complements the Summer Safety Institute for Educators, which O&E has offered in conjunction with the University of Southern Maine since 1993. The 2008 Summer Safety Institute was conducted in August at the University of Maine at Presque Isle with 18 participants completing the course. A Keene State College

train-the-trainer course was presented at the United Technologies Center in October in Bangor with 27 participants.

### ***Employer Consultation***

**Employer Profiles.** Using the data from the WCB's *First Reports* and SOII, the Research and Statistics Unit (R&S) of the BLS can provide a Maine employer with a profile of that employer's injury and illness experience over a number of years. Such a profile shows the type of disabling injuries or illnesses that have been experienced by the company's workers. This profile also describes the nature of the injury or illness and the event or exposure that led to each incident. The employer uses this information in detecting patterns in developing/refining the company safety program. In 2008, 41 profiles were requested.

**On-Site Consultation.** Also under SafetyWorks!, the Workplace Safety and Health Division (WS&H) of the BLS provides consultation services to public and private sector employers. In the private sector, BLS provides consultations to employers identified by Regional OSHA for inspection through its Local Emphasis Programs (LEPs). National and Regional OSHA identify employers for LEPs and National Emphasis Programs (NEPs) based on summary data from the WCB and the OSHA Data Initiative (ODI). Consultations are also provided in both the public and private sector upon employer request. A typical employer consultation can include an evaluation of records from the employer, including an analysis of the employer's Workers' Compensation cases and/or the OSHA Forms 300, 300A, and 301, an environmental evaluation (a walk-through), and an examination of the work processes. Consultations are advisory and cooperative in nature. In fiscal 2008, 745 consultations were requested.

For more on SafetyWorks!, go to [www.safetyworksmaine.com](http://www.safetyworksmaine.com)

### ***2B. ADVOCACY***

The Migrant and Immigrant Services Division (M&IS) coordinates services for migrant and foreign workers in Maine. The Division has a State Monitor Advocate who works with agricultural employers to ensure compliance with the federal Seasonal Agricultural Worker Protection Act and the Fair Labor Standards Act. The State Monitor Advocate monitors the payment of fair wages and ensures that the housing provided to these workers meets OSHA standards. In addition to addressing the safety and health of migrant and foreign workers, M&IS provides foreign labor certification services to Maine employers who wish to hire foreign workers. In 2008, 429 applications from 201 employers were processed seeking 3,510 Non-Immigrant Temporary Workers (i.e., H2 visas including H2A and H2B).

## **2C. ENFORCEMENT**

### **Child Labor Work Permits**

To protect young workers, the Wage and Hour Division of the BLS reviews and approves up to 5,000 work permit applications for minors each year. From July 1, 2007 to July 1, 2008, a total of 3,691 work permits were approved and 162 permits were denied. Denials are typically due to incomplete or incorrect applications, but perhaps a third are due to the applicant being underage for the proposed employment.

### **Wage and Hour Enforcement**

In addition to the issuance of work permits, the Wage and Hour Division inspects employers for compliance with Maine wage and hour and child labor law, which has an occupational safety and health component. The Division can use data from the WCB *First Reports* to select employers for inspection -- based on the age variable, an industry profile showing where young workers were injured can be generated. Employers are also identified for inspections based on combinations of certain administrative criteria or complaints. From July 1, 2007 to July 1, 2008 the Division conducted 2,763 inspections finding 363 employers in violation with 641 separate violations.

### **Public Sector Site Safety Inspections**

The Workplace Safety and Health Division (WS&H) of the BLS enforces safety regulations based on OSHA standards *in the public sector only* and is therefore responsible for the health and safety of employees of state and local governments. The Board of Occupational Safety and Health, whose members are appointed by the Governor, oversees public sector safety enforcement. WS&H prioritizes state and local agencies for inspection based on the agencies' injury and illness data from the WCB, the results of the Survey of Occupational Injuries and Illnesses (SOII), or complaints from employees or employee representatives. WS&H compliance officers conduct unannounced inspections of the work environment and can cite the state and local employers for non-compliance with safety and health standards, which may carry fines. Failure to address and abate deficiencies may result in additional fines. In situations where an operation or a process poses an immediate danger to the life or health of workers, the employer may be asked to shut down the operation; this shutdown is not mandatory, however. By way of comparison with OSHA activity in the private sector (below), 105 inspections were completed in federal fiscal year 2008. All inspections found violations: 3,799 violations resulted in \$351,150 in penalties after reductions for size of business and good faith abatement efforts.

### **Private Sector Site Safety Inspections (Federal)**

In Maine, the United States Department of Labor Occupational Safety and Health Administration (OSHA) enforces federal workplace health and safety standards in the private sector in parallel with the BLS enforcement in the public sector. OSHA prioritizes employers for inspection based

on the employers' injury and illness data from the OSHA Data Initiative (ODI), Local Emphasis Programs (LEPs) or National Emphasis Programs (NEPs) (typically developed using the ODI), or complaints from employees or employee representatives. OSHA compliance officers likewise conduct unannounced inspections of the work environment and can cite employers for non-compliance with safety and health standards, which usually carry fines. As in the public sector, failure to address and abate deficiencies may result in additional fines. In situations where an operation or a process poses an immediate danger to the life or health of workers, the employer may be required to shut down the operation. Data for federal fiscal year 2008 show that OSHA conducted 657 inspections in Maine, all of which found violations: 1,590 violations resulted in \$1,600,917 in penalties assessed.

### **3: RESEARCH AND DATA AVAILABLE**

Effective workplace injury and illness prevention services cannot be designed and delivered without a detailed working knowledge of all factors that contribute to occupational safety and health (OSH). This knowledge is gained by OSH research, through both indefinitely continuing programs and one-time, focused studies.

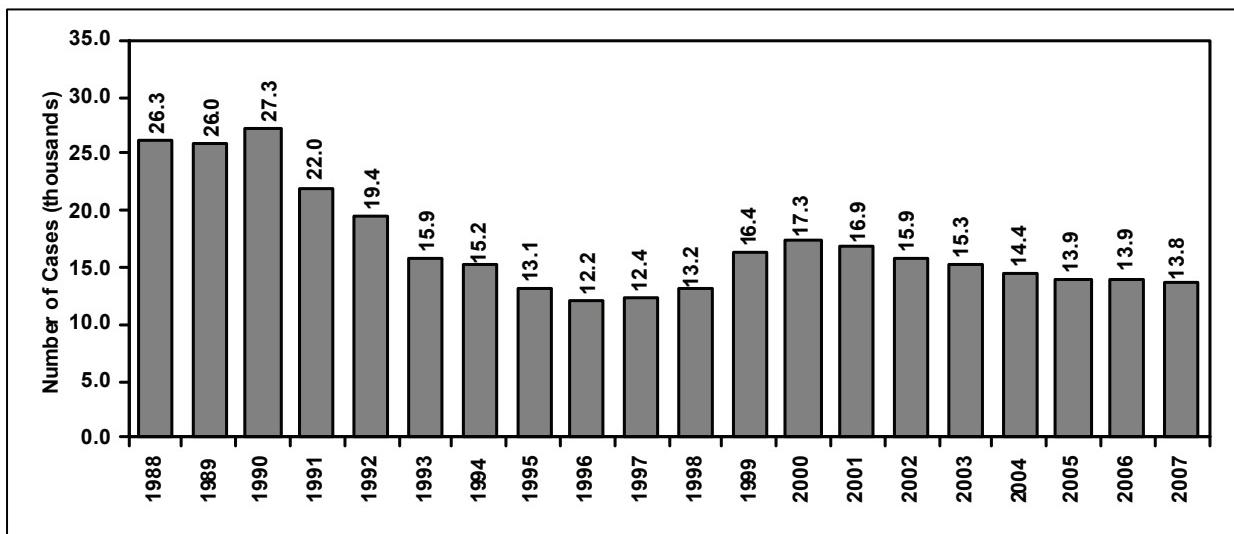
#### ***3A. Annual Studies***

The Research and Statistics Unit (R&S) in the Technical Services Division (TSD) of the Bureau of Labor Standards (BLS) is responsible for the administration of several annual OSH surveys. Taken together, the results of these surveys provide an epidemiological profile of occupational injuries and illnesses in Maine. For each of them, more information and statistics are available on the BLS website, [www.maine.gov/labor/bls](http://www.maine.gov/labor/bls), or upon request.

#### **WCB First Report of Occupational Injury or Disease**

Since 1973 the BLS has coded, tabulated, analyzed, and summarized data from the WCB *First Reports*. This activity began as a program called the Supplementary Data System (SDS) funded by the federal Bureau of Labor Statistics. When federal funding ended, this program was continued with state funding. The BLS database is directly linked to the WCB administrative data for each case and provides a wealth of information on individual cases. This tabulation is the primary data source for BLS prevention purposes because it is possible to examine many factors, including the individual employer, the age of the injured, how long the injured person has worked, the injured's occupation, and so on. Because the data are tied to the WCB administrative data, the consistency and completeness of that administrative data is critical. The BLS analyzes the WCB data and publishes a report titled "*Characteristics of Work-related Injuries and Illnesses in Maine*," which provides descriptive statistics on all disabling work-related injuries and illnesses. This and other BLS reports can be accessed at the BLS website. The following are some data from this program.

**A Twenty-Year Pattern of Disabling Cases, Maine, 1988-2007.** In 2007, there were 13,817 disabling cases reported to the Maine Workers' Compensation Board. A disabling case is a case in which a worker lost one or more days of work beyond the day of the injury. Figure 1 shows the twenty-year pattern of disabling cases. The 2007 figure shows a decrease of 54 cases from 2006. (This is the seventh straight year this figure has decreased.)



**Figure 1. Twenty-Year Pattern of Disabling Cases, 1988-2007**

**Source:** Workers' Compensation Board *First Reports of Occupational Injury or Disease*

Changes as a result of the 1990 workers' compensation reform decreased the number of reports, partly accounting for the apparent decline after that year. In 1999, the introduction of the WCB's Monitoring and Enforcement (MAE) program increased the number of reports for non-compensable (less than 7 days) lost time cases, producing part of the apparent increase in that and following years. Also, based on data from the Survey of Occupational Injuries and Illnesses (SOII) for the 1987-2001 period, there has been a marked increase in the number of cases resulting in restricted work only (no days away). SOII definitions and procedures did not change during those years.

**Geographic Distribution of Disabling Cases, Maine, 2005-2007.** In 2007, the six counties with the highest disabling case rates were (in descending order): Sagadahoc (consistently highest by almost a factor of two), Cumberland, Kennebec, Aroostook, Piscataquis, and Washington counties. Table 1 breaks down the number of disabling cases by county for calendar years 2005 through 2007. The rate is calculated by dividing the number of disabling cases in each county by its respective employment in thousands. Geographic distribution data can be useful in health planning and setting enforcement and consultation priorities by region.

Table 1. Geographical Distribution of Disabling Cases, Maine, 2005-2007

County	2005			2006			2007		
	Cases	Employment	Rate Per 1,000	Cases	Employment	Rate Per 1,000	Cases	Employment	Rate Per 1,000
Androscoggin	1,192	55,192	21.6	1,117	55,723	20.0	1,110	55,748	19.9
Aroostook	762	33,302	22.9	783	33,730	23.2	738	33,142	22.3
Cumberland	3,551	153,371	32.2	3,603	153,266	23.5	3,630	152,508	23.8
Franklin	252	14,090	17.9	243	13,797	17.6	249	13,393	18.6
Hancock	561	28,893	19.4	535	28,724	18.6	480	27,986	17.2
Kennebec	1,436	60,116	23.9	1,406	61,127	23.0	1,390	60,209	23.1
Knox	420	20,978	20.0	421	20,780	20.3	399	20,244	19.5
Lincoln	284	17,937	15.8	294	17,822	16.5	256	17,662	14.5
Oxford	445	27,156	16.4	470	26,956	17.4	452	26,888	16.8
Penobscot	1,452	74,853	19.4	1,275	75,164	17.0	1,430	73,812	19.4
Piscataquis	132	7,063	18.7	134	7,188	18.6	144	6,963	20.7
Sagadahoc	678	18,084	37.5	738	18,139	40.7	761	18,348	41.5
Somerset	413	23,279	17.7	473	23,721	19.9	460	23,386	19.7
Waldo	250	18,758	13.3	247	18,503	13.3	220	17,969	12.2
Washington	245	14,491	16.9	263	14,397	18.3	274	13,579	20.2
York	1,487	109,862	13.5	1,426	109,806	13.0	1,440	109,302	13.2
Unknown*	399	----	----	443	----	----	384	----	----
Total	13,959	677,429	20.6	13,871	678,843	20.4	13,817	671,339	22.4

**Source:** Case data from Workers' Compensation Board *First Reports of Occupational Injury or Disease*.

Employment data from the Center for Workforce Research and Information , Maine Department of Labor.

\* Unknown represents WCB First Reports with missing information.

**Disabling Cases by Occupational Groups, Maine, 2005-2007.** As seen in Table 2, more than two thirds of all reports of disabling injuries in 2007 occurred in the top eight occupational groups. Although the specific occupational groups differ slightly, this is the same situation as in 2006. With nearly 74% of disabling injuries occurring in these occupational groups, further research is needed in assessing trends and patterns of injuries and illnesses reported in these occupations. In addition, more work should be done to identify the risk factors, demographics, and the type of safety training programs that are being offered to workers and the effectiveness of such training in preventing work-related injuries.

**Table 2: Disabling Cases by Occupational Groups, Maine, 2005-2007**

Occupational Groups	2005		2006		2007	
	Number	Percent	Number	Percent	Number	Percent
Transportation and Material Moving	2,317	16.6	2,207	15.9	2,229	16.3
Construction and Extraction	1,633	11.7	1,636	11.8	1,409	10.3
Production	1,438	10.3	1,449	10.4	1,517	11.1
Office and Administrative Support	1,187	8.5	1,196	8.6	1,150	8.4
Sales and Related	991	7.1	*	*	*	*
Building and Grounds Cleaning and Maintenance	981	7.0	956	6.9	986	7.2
Installation, Maintenance, and Repair	978	7.0	1,004	7.2	979	7.2
Healthcare Support	*	*	932	6.7	974	7.1
Food Preparation and Serving	*	*	*	*	934	6.8
Other Occupational Groups	4,434	31.8	4,491	32.4	3,639	26.3
Total	13,959	100.0	13,871	100.0	13,817	100.0

**Source:** Workers' Compensation Board *First Reports of Occupational Injury or Disease*

\* Indicates that the occupational group was not in the top nine categories.

**Length of Service of Injured Worker, Maine, 2005-2007.** One of the patterns that the BLS has identified from the analyses of the WCB data is that more new hires (under one year of service) are being injured on the job when compared to those employees who have been with their employers for one year or more. New hires accounted for 4,603 (33.3 %) of the *First Reports* in 2007. (For each of the past three years, roughly one-third of all disabling cases have occurred to new hires.)

At the same time, the proportion of long-term (older) workers with 15 or more years with the same employer has increased substantially, from 10.3% of all claims in 2001 to 14.2% in 2007. Of specific concern, the proportion of workers with 20 or more years with the same employer has increased from 5.9% of all claims in 2001 to 7.9% in 2007. This change merits further investigation.

**Table 3. Length of Service of Injured Worker, Maine, 2005-2007**

Length of Service of the Injured Worker	Disabling Cases					
	2005		2006		2007	
	Number	Percent	Number	Percent	Number	Percent
<b>Total</b>	<b>13,959</b>	<b>100.0</b>	<b>13,871</b>	<b>100.0</b>	<b>13,817</b>	<b>100.0</b>
Under 1 Year	4,656	33.4	4,703	33.9	4,603	33.3
1 Year	1,745	12.5	1,805	13.0	1,919	13.9
2 Years	1,034	7.4	1,064	7.7	1,074	7.8
3-4 Years	1,464	10.5	1,355	9.8	1,382	10.0
5-9 Years	1,894	13.6	1,917	13.8	1,986	14.4
10-14 Years	797	5.7	807	5.8	799	5.8
15-19 Years	1,034	7.4	1,022	7.4	871	6.3
20+ Years	903	6.5	1,007	7.3	1,095	7.9
Unknown	432	3.1	191	1.4	88	0.6

Source: Workers' Compensation Board *First Reports of Injury or Occupational Disease*

**Nature, Source, and Event of Injuries and Illnesses, Maine, 2003-2007.** Table 4 displays the frequencies of the top five each of nature, source, and event of injuries and illnesses. Most of these counts showed a decrease from 2006.

**Table 4. Nature, Source and Event of Injuries and Illnesses, Maine, 2003-2007**

	2003	2004	2005	2006	2007
<b>Nature of Injury</b>					
Sprains, strains, tears	4,692	4,664	4,965	4,919	4,476
Unspecified pain, sore, hurt	3,863	3,462	3,081	2,693	2,476
Bruises, contusions	1,057	988	1,080	1,089	1,177
Traumatic injuries & disorders, unspecified	860	*	*	*	1,480
Fractures	*	666	755	730	*
Cuts, lacerations	745	726	682	761	758
<b>Source of Injury</b>					
Person—injured or ill worker	3,417	3,302	3,102	3,087	3,113
Floors, walkways, ground surfaces	2,332	2,055	2,181	1,965	2,318
Containers	1,609	1,513	1,287	1,159	1,200
Nonclassifiable	1,270	1,182	1,446	1,484	1,204
Parts and materials	1,009	978	810	856	822
<b>Event or Exposure</b>					
Overexertion	4,756	4,415	4,065	4,029	3,861
Bodily reaction	1,688	1,704	1,799	1,641	1,742
Fall on same level	1,631	1,313	1,515	1,301	1,711
Struck by object	1,321	1,160	1,119	1,180	1,189
Repetitive motion	1,208	1,124	929	917	845

Source: Workers' Compensation Board *First Reports of Injury or Occupational Disease*

Note: \* indicates that the specific nature and source of injury was not in the top five categories.

## **Federal Bureau of Labor Statistics Survey of Occupational Injuries and Illnesses**

Since 1972, the BLS has partnered with the federal Bureau of Labor Statistics in a cooperative agreement to collect data on occupational injuries and illnesses through the annual Survey of Occupational Injuries and Illnesses (SOII). The results from this survey are summarized and published on the Federal BLS website, <http://www.bls.gov/iif/oshstate.htm#ME>. The data are generated from a random sample stratified by industry and establishment size. There are over 3,000 work establishments in the sample in any given year. For the year 2007, BLS surveyed 2,803 private establishments and exactly 500 public sector agencies, asking these businesses about their experience with OSHA recordable injuries and illnesses. The SOII gathers data from employers' records. Besides the total numbers of OSHA–recordable injuries and illnesses, the SOII asks employers for their average employment and total hours worked at the reporting worksite. From this information, incidence rates are produced. The incident rate is the estimated number of incidents per 100 full-time workers, standardized to a full calendar year.

2001 was the last year for which SOII incident statistics are comparable to the past because of changes made to OSHA recordkeeping beginning with the 2002 data. 2002 was the first year that the OSHA forms 300, 300A, and 301 were used. Besides the new forms, sweeping changes were made to the recording criteria; some cases recordable in 2001 were not in 2002 and *vice versa*. Among the most significant changes were:

- 1) A new definition of “work-related,”
- 2) A new definition of “restricted work activity” and
- 3) An all-inclusive list of first aid (vs. medical) treatment.

***DO NOT compare data from 2002 and later years with data from 2001 and earlier! Although 2002 and later data from employer OSHA records appear similar to 2001 and earlier data, it is neither correct nor safe to make direct comparisons across the 2001/2002 line. For further information on the recordkeeping differences go to OSHA's website, [www.osha.gov](http://www.osha.gov) and click on “recordkeeping”.***

The 2002 changes to the recordkeeping regulations apply to 2003 with one important exception. In 2003, OSHA revised its regulations regarding the recording of occupational hearing loss cases. Also in 2003, work establishments were being coded according to the North American Industry Classification System (NAICS), rather than the Standard Industrial Classification (SIC) system. There is not a one-to-one comparability between even the most general levels of the two classification systems (for further information, please visit <http://www.census.gov/epcd/www/naics.html>). For these reasons, users are advised against comparisons between SOII industry categories earlier than 2003 and those of 2003 and later.

Table 5 and Figure 2 below display results from the 2007 SOII. Data collected from this survey should not be compared with WCB data for the following reasons:

- 1) The two systems use different definitions of recordability of work-related cases.
- 2) WCB data consists of frequencies only; rates cannot be computed. The SOII produces both frequencies and rates.

- 3) The WCB data is a census of injuries and illnesses while the SOII data is a statistical sample. The SOII data is therefore subject to sampling error.

**Cases and Incidence Rate of Injuries and Illnesses, Maine, 2007.** According to the 2007 SOII for private industry, the “Manufacturing” and “Transportation and Warehousing” each recorded the highest incidence rate of 8.8 cases per 100 FTE.

**Table 5. Number of Cases and Incidence Rate of Injuries and Illnesses, Maine, 2007**

NAICS Sector (Not directly comparable with SIC Division)	2007	
	Number of Cases	Incidence Rate
<b>Private Industry</b>	<b>25,725</b>	<b>6.4</b>
Manufacturing	5,145	8.8
Transportation and Warehousing	1,191	8.8
Utilities	158	8.6
Health Care and Social Assistance	5,509	7.8
Construction	2,075	7.3
Wholesale Trade	1,459	7.2
Arts, Entertainment, and Recreation	314	7.2
Retail Trade	4,360	6.6
Agriculture, Forestry, Fishing, and Hunting	267	5.4
Accommodation and Food Services	1,467	5.1
Real Estate Rental and Leasing	310	5.0
Administration Support and Waste and Remediation Services	944	4.9
Educational Services	260	3.9
Professional and Business Services	1,676	3.7
Management of Companies and Enterprises	172	2.9
Information	287	2.8
Finance and Insurance	495	2.2
Mining	N/P	N/P
<b>Public Industry</b>	<b>3,714</b>	<b>6.0</b>

**Source:** Federal Bureau of Labor Statistics *Survey of Occupational Injuries and Illnesses*

Note: “N/P” means not publishable

For further information on OSHA recordkeeping, please go to OSHA’s recordkeeping website, <http://www.osha.gov/recordkeeping/index.html>.

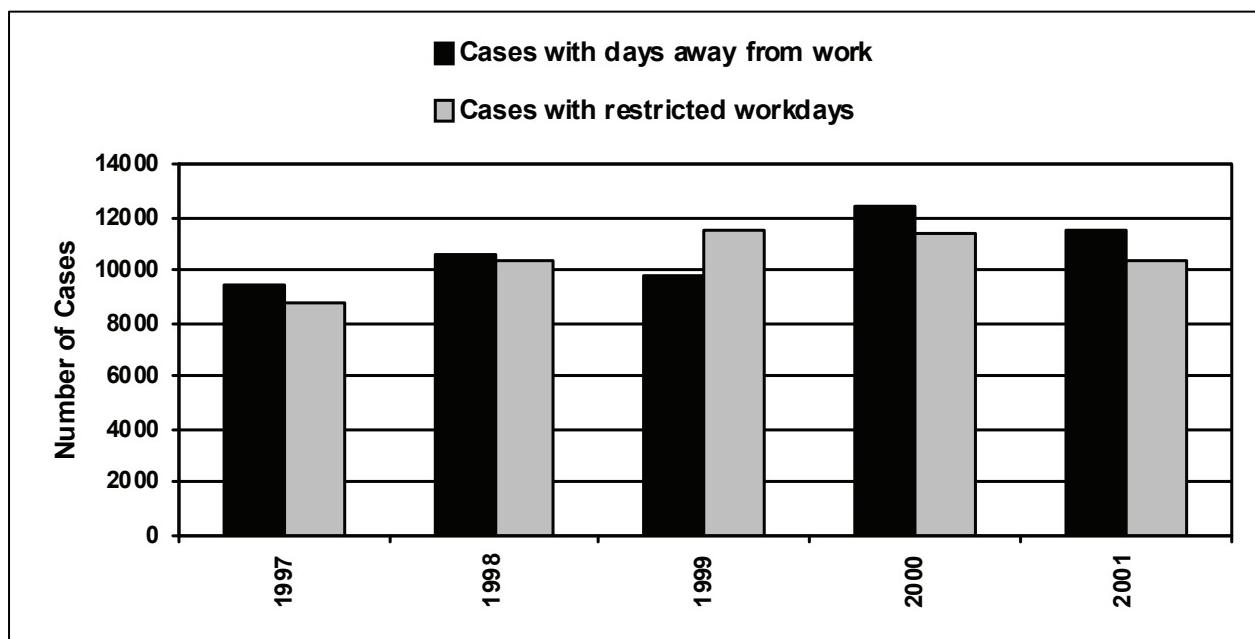
**Cases with Lost Workdays and Restricted Work Activity.** Data collected from 1992 through 2001 show a fluctuating downward trend in the reported number of cases resulting in days away from work. However, the number of cases resulting in restricted work activity has increased. The data indicate that employers are placing more injured workers on “light duty”. The BLS has hypothesized the following:

- 1) These are not severe injuries and allow an injured worker to continue working in a limited capacity.

- 2) Some employers are using this injury management approach to lower their Workers' Compensation losses and therefore lower their direct payments on their insurance premiums.
- 3) Keeping workers employed in a limited capacity is seen as good for workers' morale, preventing the turnover of skilled workers and instilling continued company loyalty and increasing productivity.

More research is needed to test these hypotheses.

**Figure 2A. A Five-Year Trend Analysis of Lost Workday and Restricted Work Activity Cases, All Industries (Public and Private Sectors), Maine, 1997-2001**



**Source:** Survey of Occupational Injuries and Illnesses

**Figure 2B. A Six-Year Trend Analysis of Lost Workday and Restricted Work Activity Cases, All Industries (Public and Private Sectors), Maine, 2002-2007**

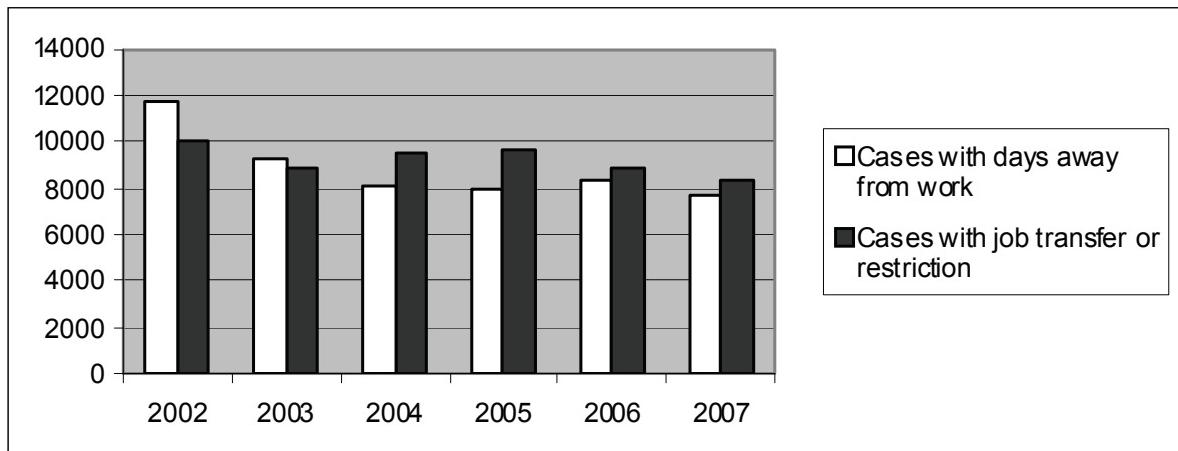


Figure 2B describes the injury data collected with revised OSHA recordkeeping regulations. These data should not be directly compared with earlier years' data (1997-2001) or with each other. For 2007, there was an estimated total of 16,122 OSHA recordable injuries resulting in at least one day away from work and/or one day of job transfer or restriction beyond the day of injury. Of this total, it is estimated that 7,739 cases resulted in at least one day away from work and 8,383 cases resulted in job transfer or restriction without any days away from work.

### ***OSHA Data Initiative***

Every year since 1993, the BLS has received a grant from OSHA to collect data on specific worksite occupational injury and illness rates in Maine. The information is used by OSHA to target establishments with high incidence rates for intervention through consultation or enforcement. Usually the regional office of OSHA initiates this activity under an OSHA Local Emphasis Program (LEP).

The survey instrument used is called the *OSHA Work-Related Injury and Illness Data Collection Form*. The data collected are from the same sources as, but less detailed compared to, the SOII survey. OSHA regional offices use the DART ("Days Away, Restricted, or Transferred") incidence rate to identify worksites for intervention. The DART rate is calculated by *dividing the total number of cases resulting in at least one day away from work and/or one day of job restriction/transfer by the total hours worked and multiplying that result by 200,000*.

For example, for the year 2006, 238 Maine worksites were identified as having a DART rate of 5.4 or higher per 100 full-time employees (compared to the national DART rate of 2.3 per 100 full-time employees). These businesses were notified by OSHA and encouraged to identify and correct any safety hazards in anticipation of OSHA inspection. Selected employers could conduct their own safety inspections, hire a consultant for that purpose, or utilize safety consultants from an OSHA voluntary safety program including SafetyWorks! (specifically

mentioned in the OSHA notification). Some were actually inspected for violations by OSHA. For more information on the ODI, go to <http://www.osha.gov/as/opa/foia/hot-14.html>.

### ***Census of Fatal Occupational Injuries***

Since 1992, the BLS has been in another partnership with the federal Bureau of Labor Statistics to administer the Census of Fatal Occupational Injuries (CFOI) program for Maine. The CFOI program collects data on all fatal occupational injuries and illnesses. The data are published in an annual series titled “*Fatal Occupational Injuries in Maine*”.

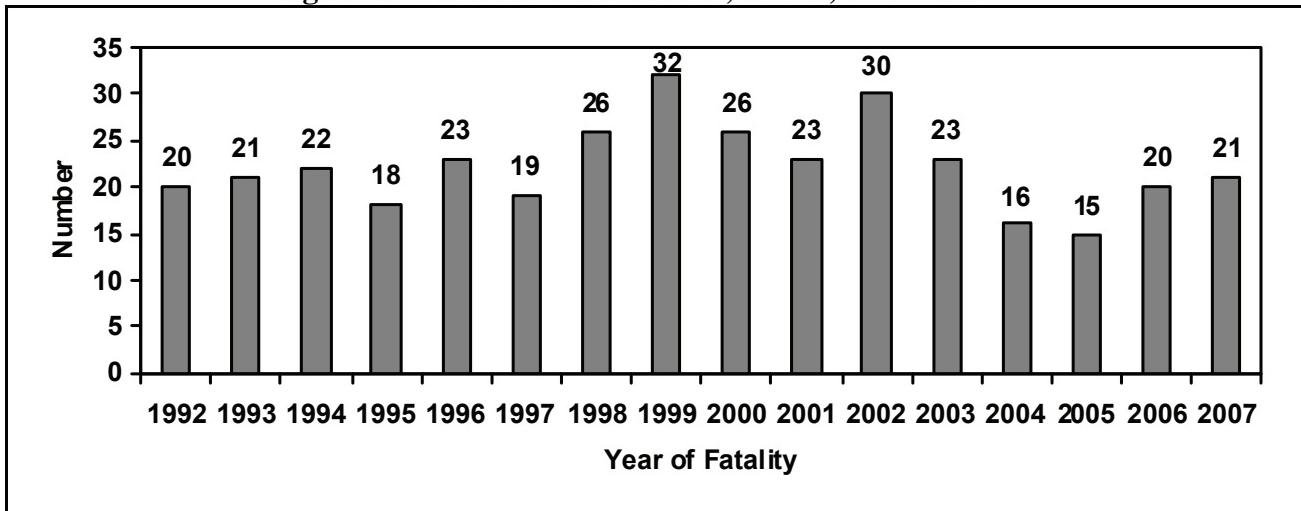
The CFOI program is a federal/state cooperative program. It was created in 1990 by the U.S. Department of Labor, Bureau of Labor Statistics and includes all 50 states and the District of Columbia. The program was established to determine a true count of work-related fatalities in the United States. Prior to CFOI, estimates of work-related fatalities varied because of differing definitions and reporting sources. The CFOI program collects and compiles workplace fatality data that are based on consistent guidelines throughout the United States.

A death is considered work-related if an event or exposure resulted in an employee fatality while in work status, whether at an on-site or off-site location. Private and public sector (state, local, and county government) are included. Fatalities must be confirmed by two independent sources before inclusion in the CFOI. Sources in Maine include death certificates, the WCB *First Report of Occupational Injury or Disease*, and fatality reports from the following agencies and sources: 1) the Chief Medical Examiner’s Office; 2) the Department of Marine Resources; 3) the Maine State Police; 4) the Bureau of Motor Vehicles; 5) the U.S. Coast Guard; 6) OSHA reports; and 7) newspaper clippings and other public media.

Only fatalities due to injuries are included in the CFOI. Fatalities due to illness or disease tend to be undercounted because the illness may not be diagnosed until years after the exposure or the work relationship may be questionable. Occupational illnesses are, therefore, excluded from the state CFOI program as required by the Federal Bureau of Labor Statistics that provides funding for this program.

**Fatal Occupational Injuries, Maine, 1992-2007.** Figure 3 shows the numbers of work-related fatalities recorded in Maine from 1992-2007.

**Figure 3. Work-related Fatalities, Maine, 1992-2007**



Source: Maine Census of Fatal Occupational Injuries

#### **Fatal Occupational Injuries by Industry and Event/Exposure, 1992-2007**

Transportation accidents have accounted for more occupational fatal injuries than any other event or exposure in Maine as shown in Table 6. Since 1992, more than 49% of the fatal work-related injuries in Maine collected under the CFOI program have been classified as transportation related.

**Table 6. Fatal Occupational Injuries by Industry and Event/Exposure, Maine, 1992-2007  
(to be updated)**

Industry Division	Total	Trans- portation Accidents Highway & Non- highway	Contact with Objects & Equipment	Falls	Exposure to Harmful Substances	Assaults & Suicides	Fires & Explosions
<b>Total</b>	<b>358</b>	<b>176</b>	<b>74</b>	<b>46</b>	<b>37</b>	<b>18</b>	<b>7</b>
Agriculture, Forestry & Fish.	92	63	6	5	18	--	--
Manufacturing	54	14	30	10	--	--	--
Transportation & Public Utilities	58	42	7	4	5	--	--
Construction	47	8	11	16	9	--	3
Services	33	12	12	5	--	4	--
Retail	21	10	--	5	--	6	--
Government	17	12	--	--	--	5	--
Wholesale	13	13	--	--	--	--	--
Other/Nonpublishable & Unknown	23	2	8	1	5	3	4

Source: Census of Fatal Occupational Injuries

-- Dashes indicate less than .5 percent or do not meet publication criteria.

## ***Employer Substance Abuse Testing***

The Maine Substance Abuse Testing Law controls employer drug testing that is not performed in response to federal mandates. Therefore, the Bureau of Labor Standards also must review and approve the proposed testing policy of any company that wants to have a substance abuse testing program but is not required to under federal law. BLS can supply employers with a model substance abuse testing policy to assist in developing an acceptable workplace-specific policy.

This program is not a part of the OSH profile, but still in support of occupational injury and illness prevention is the annual “Substance Abuse Testing Report” compiled by the BLS. The Maine Substance Abuse Testing Law, Title 26 MRSA, Section 680 *et seq.*, requires the MDOL to report to the legislature on activities under that statute. The “Substance Abuse Testing Report” data do not include activities under federally mandated testing programs. Therefore, these data should not be taken as a comprehensive representation of workplace substance abuse testing in Maine.

The Maine Substance Abuse Testing Law is intended to protect the privacy rights of employees, yet allow an employer to administer testing; to ensure proper testing procedures; to ensure that an employee with a substance abuse problem receives an opportunity for rehabilitation and treatment; and to eliminate drug use in the workplace. Regulation of testing for use of controlled substances has been in effect under Maine law since September 30, 1989.

The administration of this law is a collaborative effort of the following agencies.

- 1) The Maine Department of Labor (MDOL), which:
  - Reviews and approves substance abuse testing policies,
  - Conducts the annual survey of substance abuse testing,
  - Analyzes testing data and publishes the annual report, and
  - Provides model policies -- a model job applicant testing policy was developed by the MDOL in 1998 and a model probable cause testing policy in 2000 -- to help employers write substance abuse policies for their workplaces.
- 2) The Maine Department of Health and Human Services (DHHS), which licenses testing laboratories and the Office of Substance Abuse Services within DHHS which reviews and approves employee assistance programs (EAPs) for employers who do probable cause or random and arbitrary testing; any employer with more than 20 full-time employees must have a functioning EAP prior to testing their employees

The following table and graph show the trend of non-federally-mandated drug testing from 1998 through 2007.

**Table 7. Substance Abuse Testing**

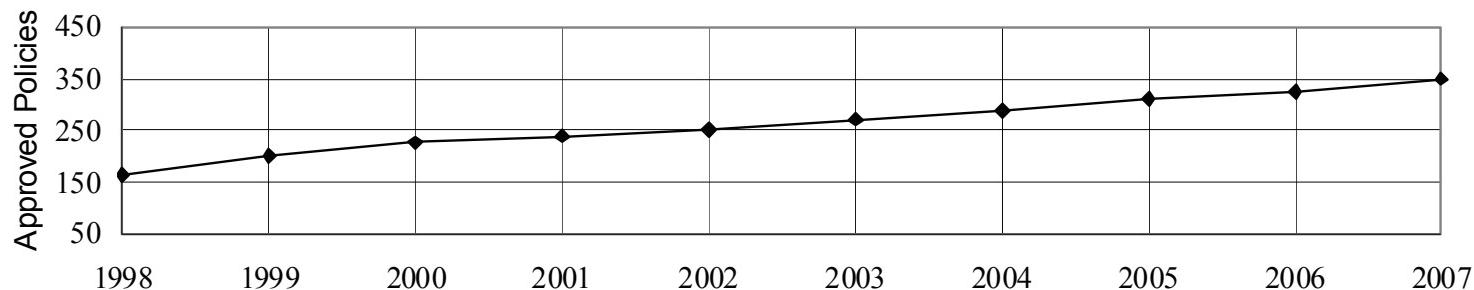
**Yearly Totals by Type of Test  
Applicants/Employees  
1998-2007**

Year	Number of Employers w/ Policies	Total Tests	Total Positives	Percent Positive	Applicant Tests	Applicant Positives	Percent Positive	Probable Cause Tests	Probable Cause Positives	Percent Positive	Random Tests	Random Positives	Percent Positive
2007	350	22,641	1,110	4.9	21,700	1,076	5.0	5	4	80.0	936	30	3.2
2006	325	18,112	853	4.7	17,364	824	4.7	18	2	11.1	730	27	3.7
2005	310	17,742	749	4.2	16,876	706	4.2	18	9	50.0	863	34	3.9
2004	287	17,428	826	4.7	16,702	803	4.8	6	1	16.7	720	22	3.1
2003	271	16,129	761	4.7	15,345	727	4.7	29	7	24.1	755	27	3.6
2002	252	13,128	642	4.9	12,595	624	5.0	10	0	--	523	18	3.4
2001	239	16,492	730	4.4	15,947	716	4.5	8	1	12.5	537	13	2.4
2000	226	18,827	765	4.1	18,164	748	4.1	12	1	8.3	651	16	2.5
1999	200	20,725	691	3.3	20,118	660	3.3	9	4	44.4	598	27	4.5
1998	164	11,888	352	3.0	11,459	343	3.0	4	0	--	425	9	2.1

Indicates a value of less than 0.05%

**Figure 4.**

**Employers With Approved  
Substance Abuse Testing Policies  
1998-2007**



### **3B. RESEARCH PROJECTS OTHER THAN ANNUAL**

#### ***Capacity Building in OSH Surveillance***

The Maine Bureau of Labor Standards (BLS) is a member of a national work group that developed core occupational safety and health surveillance indicators. The membership of this workgroup is comprised of epidemiologists and researchers from 13 states, the Council for State and Territorial Epidemiologists (CSTE) and the National Institute for Occupational Safety and Health (NIOSH). In addition, the Workgroup has developed a “How to Manual” on generating these indicators. The manual is available on the CSTE website: [http://www.cste.org/pdffiles/Revised%20Indicators\\_6.24.04.pdf](http://www.cste.org/pdffiles/Revised%20Indicators_6.24.04.pdf)

These Occupational health indicators can provide information about a population’s status with respect to workplace factors that can influence safety and health of workers. These indicators can either be measures of health (work-related disease or injury) or factors associated with health, such as workplace exposures, hazards or interventions. These indicators are intended to:

- 1) Promote program and policy development at the national, state, and local levels to protect worker safety and health.
- 2) Build core capacity for occupational health surveillance at the state level.
- 3) Provide guidance to states regarding the minimum level of occupational health surveillance activity.
- 4) Bring consistency to time trend analyses of occupational health status of the workforce within states and to comparisons among states.

The funding for the project ended in 2005 but since then the MDOL has continued to participate in the Workgroup and the results of this initiative are available on the CSTE website: <http://www.cste.org/OH/OHmain.asp>

#### ***Occupational Fatality Reports***

In 2002, the Maine BLS pilot-tested a fatality assessment, control and evaluation (FACE) program. The pilot program was modeled after the National Institute for Occupational Safety and Health (NIOSH) program. In 2003, the MDOL completed 4 FACE case studies: 2 fatalities on electrocutions, one involving a bucket loader and one on workplace homicide. These reports can be found at: [http://www.maine.gov/labor/labor\\_stats/publications/face/index.html](http://www.maine.gov/labor/labor_stats/publications/face/index.html)

With no funding from NIOSH, the Maine BLS has again implemented its own occupational fatality reporting program. These Occupational Fatality Reports will be made available as widely as possible to draw attention to the conditions and behaviors resulting in workers’ deaths.

## 4: PROBLEM AREAS

### **4A. IMPROVEMENTS NEEDED IN DATA COLLECTION AND SHARING**

#### ***EDI and Missing Fields***

As of January 1, 2005, all filings of WCB *First Reports* were required to be done by electronic data interchange (EDI), computer-to-computer, using one of two formats. As of July, 2008 all but a few submitters were using the International Association of Industrial Accident Boards and Commissions (IAIABC) Standard 3 format. Under the new EDI standard, certain fields are classified as “required”: that is, necessary for a claim to be processed. Others are classified as “expected”; i.e., not required for a claim to be processed but necessary to complete a report. Although the WCB will request missing “expected” data from the reporting entity, that data may not be forthcoming or available to the Maine Bureau of Labor Standards (BLS) for coding at the time the reports are coded.

“Expected” fields include occupation, nature of injury code, part of body code, cause of injury code, and a narrative of how the injury occurred. When these fields are missing, in particular the narrative, the BLS coder must re-contact the reporting entity to attempt to get the information, which delays the case coding and collectively more than doubles the time it takes to code all such cases. These “expected” fields are critical in BLS analysis for occupational safety and health planning, outreach and education, and prevention efforts.

Ideally, a filer with missing or invalid “expected” data would be sent an error message and all identified errors would be corrected within 14 days after the date the acknowledgement transmission was sent by the WCB, or prior to any subsequent submission for the same claim, whichever is sooner. The rules have been proposed and the programming coded for this feature as part of the WCB IAIABC EDI standards, however the quality of the current cases coming through the system to BLS indicates it is not yet working. Furthermore, if there are no subsequent transmissions, the “expected” fields are not monitored for compliance anyway and it is possible they may never be updated. With the addition of “medical-only” case reporting, the numbers of deficient reports will increase considerably if the quality of all reports is not monitored and maintained. BLS recommends that these needed fields be monitored, whether the *First Report* is “lost time” or “medical-only,” and that penalties be assessed for patterns of failure in providing useful information or, alternatively, that rewards be given to those who maintain report quality and that, as with other monitoring activity, the quality reports and any interventions be made public.

The implementation of EDI is presenting challenges at several levels. It is leading to more participants and complexity of the process on one hand, yet it is creating discussion of data flow and quality checks on the other. The net effect on the completeness and quality of the data is not yet known as a result. It is clear that the implementation process is finding and plugging a number of reporting holes that existed with the manual system, yet the demand for certain data elements at certain times may result in reporters fabricating data to get the system to accept a

report. The BLS will need to monitor the new process to be sure it is not producing fabricated data. Ideally both completeness and accuracy will improve as a result of the changes and these goals will need to be a part of the monitoring and the penalties and rewards. In a recent study, BLS found that while quality has been consistent through the change, the amount of work required has more than doubled. We hope that this is temporary as the bugs are worked out and people are instructed in the new process.

### ***“Return to work date”***

Table 9 shows the missing information for the variable, “return to work” (RTW) date as compared with the numbers of disabling cases from the WCB *First Report* forms for seven years (2001-2007). There were 6,490 cases with no RTW date for the year 2007 as of the tabulation of this data in December of 2008. This is a very large proportion of cases and would be a matter of great concern in terms of social and monetary cost if the employees were actually out of work. However, the BLS strongly suspects, from known cases, that a significant number of these workers have actually returned to work and the RTW date has not been provided through the EDI (Electronic Data Interchange) system.

This missing information prevents the BLS and the WCB from generating an accurate estimate of the number of workdays lost due to a work-related injury or illness. The RTW date is critical in conducting cost-benefit analyses of workplace safety programs. Other potential uses of this variable are assessing the severity of an injury or illness and determining which industry sectors are experiencing more lost workdays. It also provides a critical check as to whether or not indemnity benefits were owed injured workers who exceeded the 7-day waiting period. As it is, these cases cannot be distinguished from those that simply returned before the waiting period. A case might not have a return to work date on it due to death or to a prolonged incapacity. Of those cases, though, there are a number where the WCB 11 form is either not timely or was not properly closed. The EDI process should bring more of these types of problems to light.

**Table 9. Missing Return-to-Work Date, Maine, 2001-2007**

	2001	2002	2003	2004	2005	2006	2007
<i>First Reports with an incapacity Date</i>	18,330	17,256	16,299	15,688	15,243	14,775	14,737
Of those, cases lacking a return-to-work date	8,353	7,751	7,268	6,918	6,578	6,073	6,490
Raw percent lacking RTW date	45.6%	44.9%	44.6%	44.1%	43.2%	41.1%	44.0%
Cases lacking a RTW date and fatal or compensable cases	1,495	1,324	1,337	1,269	1,319	1,332	1,088
Cases lacking a RTW date and not fatal or possibly still out	6,857	6,427	5,931	5,649	5,258	4,737	5,402
Minimum percentage without a valid RTW date	37.4%	37.2%	36.4%	36.0%	34.5%	32.1%	36.7%

**Source:** Workers' Compensation Board *First Reports of Occupational Injury and Disease, WCB-11, Interim Reports*

The RTW date became even more important to BLS in 2006. In the new strategic plan of the Maine Department of Labor, a new set of measures is called for to evaluate the effectiveness of prevention methods. The form of the new measures came from work that the National Institutes of Occupational Safety and Health (NIOSH) developed for loss of life due to work-related fatalities. The measures will include worker-years lost due to work-related injury or illness. This particular measure can be viewed not only as an estimate of how severe work-related injuries and illnesses are in Maine, but also as an indicator of how successful we are at getting people back to work. Eventually, the goal of the Department is to look at this measure in the context of specific industries, occupations, geographic regions and/or other factors, as well as looking at the state as a whole. The new measures, in aggregate, can be treated as representing lost productivity and a basis for OSH policy decisions.

Computation of worker-years lost will be a challenge in two respects even beyond the missing RTW dates. The first is that the system is not set up to record the past as it moves forward in time--instead it takes snapshot pictures of where the cases are at any point in time. As it is now we can say how many worker-years were lost (to date) due to injuries that occurred in 2007, but the system is not geared to tell us how many worker-years were lost during 2007 for injuries that occurred *before* 2007. This may be a matter of programming and learning how to appropriately process the existing information from the Workers' Compensation system, or it may be a matter of accepting less than ideal information to do it (developing a "proxy").

The second way lost worker-years may be a problem is that the system is not geared for reporting time the worker is out in situations where there are many small work interruptions such as occur with carpal tunnel and repetitive trauma. We can tell the duration from the start to finish of a payment episode, for instance, but if there were both days at work and days out within that

episode, we are not sure if or how we can recognize this from the existing system. The solution to this problem also may be matter of coming up with how to do it with existing information, or in attempting to do this we may identify a need to modify the system.

As the system stands now we still have basic difficulties with identifying which workers are actually out and which have returned to work. As long as this remains the case, no meaningful estimate of worker-years lost can be derived. We believe the EDI process will remove at least some of the reporting holes, but we are still not sure it will plug all of them. We will be evaluating the quality of data as the changes are implemented and reporting requirements are enforced.

### ***Costs data***

The individual case cost data from the WC system is now available and the BLS is in the process of developing useful representations of it. One product already in use compares the total and average case costs for an employer to the total and average case costs for the employer's industry and for total and average case costs in the state and does so over a number of years. It has been used to show the effect of a change in case management for one company and for overall progress in another. In the next few years, we should be able to incorporate the cost data into tabulations that will be useful to compare and contrast groups of cases as we do for the case counts now. As with duration, the cost data also suffers from the problem of it being a "snapshot" of the cases at a point in time, some of which are closed and not accumulating further expenses while others are open and continue to accumulate data. Eventually we will need to define and make determinations for "open" and "closed" cases and be able to tabulate data based on that characteristic.

The range in duration and cost will open new possibilities as well, telling us the groups and types of cases that have more uncertainty in their outcome. This, in turn, may allow us to focus attention on classes of cases where the medical treatment and case management is more a factor in what happens over the life of the case. This is consistent with research WCB is doing on the costliest cases, where findings show that some of the most costly cases are ones where the initial injury or illness was simple at the start.

## **4B. EFFORTS TO IMPROVE DATA COLLECTION AND SHARING**

### ***Occupational Safety and Health Data Collection and Injury Prevention Work Group***

The Occupational Safety and Health Data Collection and Injury Prevention Work Group was convened in 2003 by the Department of Labor under 2003 Public Law chapter 471. Its creation had been advocated by the Maine Occupational Research Agenda (MORA, see below). The purpose of the Work Group is to evaluate the data currently available on work-related injuries and illnesses and to review efforts to prevent such injuries and illnesses. The Work Group will also identify ways to improve the collection and analysis of the data and to enhance related prevention efforts. Members were chosen to be broadly representative of those with interests and expertise in OSH and workers' compensation. In 2008, the Work Group put its efforts regarding

data collection and analysis into defining specific problems and formulating specific recommendations concerning those problems. The results of this work will be reported to the legislature in mid-to-late 2009. On the prevention side, a survey was developed to assess employers' attitudes toward web-based safety training. The results of this survey suggest that computer usage for prevention depends on the employer/owner's familiarity with computers. This means that we have to promote alternatives to computer-based services to reach the smaller employers (1-50 employees).

## 5. 2008 DEVELOPMENTS

### ***5A. Grants***

The BLS uses WCB data to supplement federal Bureau of Labor Statistics and OSHA data in developing OSH grant applications. There were no new grant applications were initiated in 2008.

### ***5B. Program Initiatives***

From time to time, based on evident needs, the BLS initiates or enters into partnerships initiating various programs promoting occupational safety and health. Those below were active or activated during 2008.

#### ***Maine Occupational Research Agenda (MORA)***

In 2000, following discussions at the first Maine OSH Research Symposium, the BLS took the initiative to create a Maine Occupational Research Agenda. MORA is modeled after the NIOSH National Occupational Research Agenda (NORA). The Technical Services Division's OSH Epidemiologist, in collaboration with the MORA Steering Committee members, developed the research agenda and is moving it forward. MORA committee members include education and health professionals, members of several government agencies, and insurers. In 2008, MORA provided input to BLS on a variety of OSH issues through review of relevant projects.

For more information on MORA, go to MORA's website, [www.maine.gov/labor/bls/MORA.htm](http://www.maine.gov/labor/bls/MORA.htm)

#### ***Data Outreach Initiative***

In 2004, the Research and Statistics Unit of the BLS intensified its efforts to place its accumulated data and data-related services before the public. This outreach initiative took the form of such items as a promotional tri-fold, explaining the Unit's profile service and describing its major data sources. These were distributed in various ways, including as handouts at seven annual conferences such as the Construction Expo in April and the Maine Employers' Mutual Insurance Company Conference in November. Unit personnel attended some of these meetings in order to answer questions and take requests for profiles.

#### ***SHARP and SHAPE Award Programs***

SafetyWorks!, in partnership with federal OSHA, administers the Safety and Health Achievement Recognition Program (SHARP). Under this program, a private employer with 250 or fewer employees who meets the program requirements for employee safety and health, including a functional safety and health program, is exempted from programmed inspection for

one year after a probationary period. The probationary period is used to fine tune the employer's program and make sure that all SHARP requirements are met. Employers successfully meeting SHARP requirements are publicly honored. Eleven new employers and seven renewals qualified from 10/01/2007 to 09/30/2008. These were:

New SHARP employers:

HP Hood, Portland  
Marden's Inc, Gray  
Marden's Inc, Lewiston  
Marden's Inc, Waterville  
CH2M Hill, Biddeford  
Jotul North America, Gorham  
Lyman Morse Boatbuilder, Thomaston  
Deering Lumber, Biddeford  
Brockway-Smith Co, Portland  
Peavey Manufacturing, Eddington  
Madigan Estates, Houlton

Renewals:

Robbins Lumber, Searsmont  
Fraser Timber, Masardis  
The Hinckley Co, Trenton  
Limington Lumber, E. Baldwin  
Marden's Inc, Calais  
Marden's Inc, Presque Isle  
Fraser Timber, Ashland

In 2006, SafetyWorks! initiated the Safety and Health Award for Public Employers (SHAPE) program, a public-sector application of the federal private-sector SHARP program. Ten new employers and seven renewals qualified in calendar year 2008. These were:

New SHAPES employers:

Berwick Fire (Berwick)  
Gardiner Fire and Rescue (Gardiner)  
Town of Brunswick (Brunswick)  
Town of Kennebunk (Kennebunk)  
Bangor Public Works (Bangor)  
Augusta Sanitary District (Augusta)  
City of Caribou (Caribou)  
Westbrook Public Services (Westbrook)  
North Lakes Fire and Rescue (Aroostook County)  
Hampden Water District (Hampden)

Renewals:

United Technologies Center (Bangor)  
EcoMaine (Portland)  
Westbrook Fire and Rescue (Westbrook)  
Caribou Fire and Rescue (Caribou)  
Paris Fire (Paris)  
Farmingdale Fire (Farmingdale)  
Northern Penobscot Tec (Lincoln)

## **5C. LEGISLATION**

The BLS often provides information in response to bills before the Legislature. There was limited legislative action directly impacting occupational safety and health in the Second Regular and First Special Sessions of the 123<sup>rd</sup> Legislature. There were two bills of note.

LD 591, An Act Regarding Occupational Safety and Health Training for Workers on State-funded Construction Projects, would require all workers on state-funded construction projects valued at \$100,000 or more to have an OSHA 10-Hour card, which certifies that the worker has basic OSH training. This bill, which was supported by the MDOL, was held over from the First Regular Session. This bill eventually passed in the House but failed in the Senate.

LD 2205, An Act To Further Clarify Worker Payment for Clothing and Equipment, provides that an employer may not charge an employee for clothing and equipment, including personal protective equipment, where they are incidental to the employer's business. This bill, which was proposed by the MDOL, was a follow-up to 2007 Public Law chapter 357. Due to the near simultaneous passage to two separate bills affecting the same section of statute there was a potential conflict that this bill alleviated.